United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANTS AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,368

THOMAS BULLOCK, Administrator
of the Estate of Pinkey Bullock,
Appellant,

v.

PENNSYLVANIA GREYHOUND LINES, INC.,
a corporation, et al.,
Appellees;

United States Court of Appeals
For the
District of Columbia Circuit
FILED MAY 26 1958
Joseph W. Stewart
CLERK

No. 14,369

45

THOMAS BULLOCK, Administrator
of the Estate of Daniel M. Bullock,
Appellant,

v.

PENNSYLVANIA GREYHOUND LINES, INC.,
a corporation, et al.,
Appellees;

No. 14,370

CARLESTER BULLOCK,
Appellant,

v.

PENNSYLVANIA GREYHOUND LINES, INC.,
a corporation, et al.,
Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

William B. Bryant
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Washington, D. C. ROBERT I. THIEL Printer EX 3-0625

QUESTIONS PRESENTED

1. Whether, in action by representative of the operator of a westbound automobile, against the owner of a northbound bus for death resulting from an intersection collision between the automobile and bus, the owner of the bus was entitled to a directed verdict, where the direct evidence was contradictory as to whether the automobile emerged in plain sight onto the northbound half of the highway when no northbound traffic was within the range of vision of over six hundred (600) yards; stopped at the center line of highway to await for southbound traffic to pass when bus was more than 300 yards away; and had thereafter remained motionless until hit by the bus which had been travelling at an illegal rate of speed, or was suddenly driven onto the highway when the bus was within three bus lengths, or less, of the intersection?

a. Whether, under the same circumstances, the owner of the bus was entitled to a directed verdict against a passenger of the automobile and the representative of a deceased passenger of the automobile whose actions for injuries received in and death resulting from this collision, respectively, had been consolidated for hearing with that of the representative of the deceased operator?

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BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from a final judgment of the United States District Court for the District of Columbia which directed verdicts for appellees (defendants below) in an action brought by appellants for damages because of appellees' negligence.

The jurisdiction of this Court is invoked under the provisions of Section 1291, Title 28, United States Code.

STATEMENT OF THE CASE

On June 6, 1954, between 6:00 and 6:30 A. M., Daniel M. Bullock and his mother, Pinkey Bullock, were killed when a bus of the Pennsylvania Greyhound Lines, Inc., collided with the automobile in which they were riding on the Washington-Baltimore Boulevard near Halethorpe, Maryland (J. A. 33). Carlester Bullock, the wife of Daniel M. Bullock, also a passenger in the automobile, sustained serious and painful injuries. The car was operated by Daniel M. Bullock.

In August 1955, Thomas Bullock, the administrator of the estates of both Pinkey Bullock and Daniel M. Bullock, brought suits for wrongful death against the Greyhound Lines and the bus driver; and Carlester Bullock sued the same defendants on her own behalf.

The cases were consolidated and came on for trial before the Honorable Edward M. Curran, Judge, and the jury on October 22, 1957. At the close of the plaintiff's evidence, the trial court denied defendant's motion for directed verdict. At the end of defendant's case, the motion was renewed and the Court granted same. Plaintiff's motion to set aside the verdict was denied and final judgment entered thereon. It is from these verdicts and judgments that appeals are taken.

The proof offered by plaintiff to establish the defendant's negligence was substantially as follows:

Oscar Bullock, a brother of the driver, Daniel M. Bullock, who was seated on the passenger side of the front seat, stated that while driving north toward New York at about 6:00 A. M. on June 6, 1954, they found themselves on the wrong highway, and when they got an opportunity they drove off of the main boulevard by turning right onto a private driveway leading to a factory. (J. A. 18) Preparatory to re-entering the highway and retracing their course, the driver turned the

car around and headed it toward the road they had just left. Bullock stated that his brother came to a complete stop in obedience to a stop sign controlling traffic entering onto the highway from the driveway, and that from the point at which they stopped he could see the distance of some six-hundred (600) yards down the highway to his left (J. A. 19). According to Bullock, there was no oncoming traffic from that direction, and his brother ventured to the center line which divided north and southbound lanes of the highway, and awaited an opportunity to join the stream of southbound traffic. This put the automobile across the north-bound lanes. While at a stand-still, the defendant's bus was observed approaching the automobile at least three-hundred (300) yards away (J. A. 20, 25). Bullock observed the bus approaching rapidly for some little time, and then suddenly realized that the car in which he was riding was about to be hit (J. A. 20). Bullock estimated the speed of the bus while approaching the automobile at "at least 60 miles an hour", and stated that after the car was hit it was pushed some distance sideways.

Another witness, Amesa Spruill, testified that the bus was running so fast that she had occasion to remark to fellow-passengers: "My, this bus is running fast! (J. A. 32).

A Baltimore County policeman who investigated the accident stated that the bus was proceeding north on the Baltimore-Washington Boulevard when it struck the Bullock car broadside on the left side. The officer stated that there were one hundred and eighty-five (185) feet of tire marks caused by the application of the bus' brakes to the point of broadside impact, and that after the impact the two vehicles continued in a northernly direction 62 feet, 4 inches upgrade. This last mentioned distance (62 feet, 4 inches) was also determined by tire marks from the bus (J. A. 34, 35). The police officer also testified that the speed limit on that stretch of the highway was 40 miles an hour for passenger vehicles and 35 miles an hour for trucks, but that the general speed limit on through highways in Maryland is 50 miles an hour (J. A. 36).

The bus driver admitted that at the time of the impact, the bus was travelling between 35 and 40 miles an hour (J. A. 41), this despite applying his brakes for a distance of one hundred eighty-five (185) feet immediately prior to impact.

A retired police officer who spent 16 years with the Accident Investigation Unit of the Metropolitan Police Force of the District of Columbia was called as an expert witness and testified that a bus of the type involved here would be travelling at 60 miles an hour in order to lay down a skid mark of 200' before stopping. (J. A. 50)

When the defendants made a motion for directed verdict, the Court very properly denied it; and stated:

> "This is probably one of the weakest cases I have ever heard. But I feel that it should go to the jury, because if the jury should believe -- I don't know that they will -- but if the jury should believe that Daniel Bullock had entered the highway in a careful manner and was not negligent and was already there, and the operator of the bus saw him 300 yards or so, whatever the distance was, to the south -- I don't say that they are going to find that -- but if they believe Oscar Bullock's testimony, of course the bus driver cannot just plow right into the car.
>
> "I can't pass on the facts. I think I have got to pass it on to the jury, and I will have to deny the motion." (J. A. 52)

Thereupon, defendant offered the testimony of three witnesses: The first--Gerhard Haake--testified he was a passenger on the bus, sitting on the third cross-seat from the front next to the aisle; and that he first saw plaintiff's car when the bus was about a half-mile away from it. He stated that the automobile came out to the edge of the highway and stopped and then after they had gotten within three bus lengths of the intersection, the automobile came out into the path of the bus. Haake first said the automobile shot out in front, then on cross-examination he stated that the automobile came out across the bus' path slowly, with the explanation that if it had shot out in front they would probably have missed it.

A Mrs. Cambell testified that she saw the automobile move out in front of the bus very rapidly and, according to her, the automobile was never at a stand-still.

The final witness for defendant--Beechwood Gregory--stated that he saw the car come out and stop and then when they were approximately one bus length from the car the automobile pulled out real fast as if it were going to make a left turn into the boulevard.

At the close of defendant's case, the motion for directed verdict was renewed, and the Court, after discussing the "scintilla rule", and the tests to be applied in ruling on the motion, granted it (J. A. 59-62).

STATUTES INVOLVED

Code of State of Maryland, Article 66 1/2, Section 176 H.

Whenever the State's Roads Commission shall determine ... that any prima facie speed herein before set forth is greater than is reasonable or safe under the conditions found to exist at any place upon any public highway within this state ... said State Roads Commission shall determine and declare a reasonable safe prima facie speed limit there at which shall be effective when appropriate signs giving right away thereof and erected upon any such highway or street. Violation of the provisions of this sub-section shall constitute reckless driving, to wit: operating at a rate of speed greater than is reasonable and proper.

Article 66 1/2, Section 198 A. (vehicle entering through highway or stop intersection (a)

The driver of the vehicle shall come to a full stop as required by this Article at the entrance to a through highway or shall yield the right of way to other vehicles approaching on said through highway.

Article 66 1/2, Section 207 (a) (Vehicles must stop at through highways)

The State's Roads Commission with reference to state and county highways .... may designate through highways and erect stop signs at specified entrance thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersections..

Article 66 1/2, Section 207 (c)

Every driver of a vehicle shall come to a full stop at such sign or at a clearly marked stop sign before entering an intersection and yield the right of way to vehicles approaching on the intersection of the highway except when directed to proceed by a peace officer or traffic control signal.

Federal Rules of Civil Procedure, Rule 50 (a) Motion for a Directed Verdict.

(a) WHEN MADE: EFFECT. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor.

STATEMENT OF POINT

The court below erred when it failed to consider the plaintiffs' evidence in the light most favorable to them, and granted defendants' motion for a directed verdict.

SUMMARY OF ARGUMENT

When the court granted defendants' motion for directed verdict in the face of plaintiffs' witness' direct credible testimony as to how the accident occurred, and the corroborative physical evidence and testimony of the expert witness, it failed to apply the correct test applicable to rulings on motions for directed verdict.

ARGUMENT

There was ample evidence in support of the plaintiff's theory of the case to submit it to the jury, and the court committed error when it directed a verdict for defendant.

According to plaintiff's evidence as adduced by (1) a passenger in the automobile, (2) an investigating officer, and (3) a traffic expert, the following occurred:

Prior to venturing to the center line dividing the north and south bound lanes of the Washington-Baltimore Boulevard the driver of plaintiffs' car stopped at a stop sign controlling traffic entering onto the highway from the private driveway, and observed traffic conditions on both his left and his right. It was daylight, the weather was clear, the roadway to the left could have been seen clearly for a distance of 600 yards or better, there was no traffic within those 600 yards; and thereupon the automobile proceeded to the center of the highway and stopped. After remaining stopped for some period of time awaiting an opportunity to flow into the stream of southbound traffic from the right, the passenger noticed the defendant's bus approaching from his left at a distance of 300 yards or better away. Although the bus continued approaching them, the passenger was not aware of any real peril until he noticed the apparent excessive speed of the bus, and no tendency to diminish its speed within a reasonable distance so as to avoid striking the automobile. The bus laid down 185 feet of tire marks up to the point of impact with the automobile, and an additional 62 feet plus a few inches after the impact--these last mentioned tire-marks were made by the bus while pushing the automobile sideways and upgrade. The automobile was demolished. On the basis of this physical evidence the expert witness established the speed of the bus at well over 60 miles per hour when efforts to stop it began. The posted speed limit was 40 miles per hour. In addition a witness for the defendant, one Haake, corroborated the passenger's testimony, relative to the position of the automobile on the highway, when he testified that he was one-half mile away from it when he first saw the whole car (J. A. 55). It was undisputed that the intersection of the boulevard with the side road is blind -- thus if Haake could see the whole car from that distance it had to be entirely on the highway at the time. This was the state of the evidence when the defendant made his original motion for directed verdict; and it is quite obvious why the trial court denied the motion.

The defendant's witnesses gave accounts of the happenings which were at variance with the plaintiff's version. However, the physical facts, e.g. skid marks, relative speed, complete demolition of the automobile, etc., lend support to the plaintiff's account rather than that of the defendants.

In making its final ruling on the defendants' motion for directed verdict the court discussed at some length the fact that the "scintilla rule" was not applicable in the Federal Courts, and that more than a mere scintilla of evidence must be present before a case can be submitted to a jury. The inference, of course, is that plaintiffs' evidence in the instant case did not rise above the scintilla level.

Appellants have no quarrel with the principle that a mere scintilla of evidence is insufficient to warrant a case going to a jury. However, appellants urge that this case does not fall within this category.

What is a scintilla of evidence? We suggest that a scintilla of evidence signifies mere speculation and conjecture; or inferences from facts tantamount to speculation and conjecture. However, the fact that several witnesses contradict a party's statement (even an unsupported statement) does not make his testimony a mere scintilla of evidence. There was substantial evidence in this case supporting plaintiffs' theory of recovery.

Positive direct testimony of one party's witness or witnesses, as to facts, cannot be disregarded by a court, and the other party's directly contradictory testimony as to the same facts, be substituted therefor because of numerical superiority, greater weight, or higher credibility of his witnesses for the purpose of determining the facts to which it will apply the law in ruling on a motion for directed verdict. Where there is a direct conflict of testimony upon a matter of fact, the question must be left to the jury to determine without regard to the number of witnesses on either side.

This is not a case where the evidence made only a so-called "one way" verdict reasonably possible. Undoubtedly the jury could have found for the defendants had the court allowed it to perform its function; but it would not have been compelled to do so on the state of the evidence; and there would be no reason to disturb a verdict for the plaintiffs if such a verdict were reached. The very essence of the jury's function is to select from among conflicting testimony inferences and conclusions that it considers most reasonable. Jurors are supposed to reach their conclusions on the basis of common sense, common understanding and fair beliefs, grounded on evidence consisting of direct statements by witnesses or proof of circumstances from which inferences can fairly be drawn. Schultz v. Pennsylvania Railroad, 350 U. S. 523, 100 L. Ed. 668.

According to the authorities, the court in deciding on a motion for a directed verdict, must consider the evidence in a light most favorable to the party against whom the motion is directed; his evidence must be taken as true; and those controverted facts must be resolved in his favor; and the strongest inferences reasonably deductible from the most favorable evidence should be indulged in his favor. In passing upon the motion the court should not pass upon the credibility of witnesses and should not weigh the evidence; and if reasonable men could reach different conclusions on the evidence, the case should go to the jury. Shewmaker v. Capital Transit Co., 79 U. S. App. D. C. 102; Peigh v. Baltimore & O. R. Co., 92 U. S. App. D. C. 198; Williams v. Capital Transit Co., 94 U. S. App. D. C. 221.

In this same connection appellants urge that the language of this court in Simmonds v. Capital Transit Co., __ U. S. App. D. C. __, 147 F. 2d 570, is particularly apropos to this case, where it states:

> "It is true there was conflicting and contradictory evidence and the trial judge was justified in concluding that the evidence proponderated against appellant's allegations and contentions. But that was not the test to be applied upon a motion for judgment n. o. v..... In other words, construing the evidence

> most favorably to appellant and giving him the full effect of every legitimate inference therefrom .. as the law requires .. reasonable men might well differ in their conclusions, upon the evidence so considered. No more is required to sustain the verdict against a motion for judgment n.o.v." [1]

In urging his motion for a directed verdict, counsel for defendants relied heavily upon what he conceded to be Maryland's harsh law governing travelers on favored highways, which law is applicable under the doctrine of lex loci delecti. But even giving full force and effect to the boulevard statutes, in the circumstances of this case the jury could have reasonably and fairly concluded that the driver of the automobile was not negligent when he drove his car onto that part of the highway on which no traffic was in sight for a distance of 600 yards or more, and relied on his chance to get into the southbound lane before becoming an impediment to northbound traffic. Laws which require drivers on unfavored highways to yield the right of way to drivers on favored highways contemplate the right of way for traffic already approaching, or likely to be so approaching and at the same time so near, that to venture out onto the highway might reasonably constitute a hazard to favored traffic. Thus the jury could well have believed that the plaintiffs' car had not usurped the bus' right of way within the contemplation of the statute, and that the defendants' failure to keep his vehicle under such control as to avoid the accident was negligence, and the sole cause of it.

Then again, the jury could well believe that even if the driver, Bullock, were unwise in placing his car on the northbound half of the roadway, that the bus driver saw him, or should have seen him and his peril sufficiently long enough and far enough away to avoid the accident by the exercise of reasonable care. In other words, the jury could fairly and reasonably conclude that these circumstances called for the application of the last clear chance doctrine. Applicability of this doctrine to certain factual situations is recognized by both the Maryland cases, and this court, even where the so-called Maryland right away

1 In Shewmaker v. Capital Transit Co., supra, the court points out that this rule applies to motions for directed verdict.

statutes are involved. Shedlock v. Marshall, 46 A. 2, 349; Greenfeld v. Hook, 8 A. 2 888; Miller v. Pennsylvania Railroad Co., ____ U. S. App. D. C. ____, (December 26, 1957), 251 F. 2d 376. As a matter of fact, in the Maryland cases where the last clear chance doctrine has been held inapplicable, the courts have pointed out the conspicuous absence of factors such as we have in this case which would call for its application. Shriner v. Mullhausen, 122 A. 2 570.

Still another plausible conclusion open to the jury would be that Bullock was negligent in placing his car out on the boulevard, but that the defendant was operating his vehicle in an unlawful and negligent manner by exceeding the posted speed-limit, and that the accident was the result of the concurrent negligence of the bus driver and the driver of the automobile. Exceeding the speed limit is prima facie evidence of reckless driving under the Maryland Code. Since the negligence of the automobile driver could not be imputed to Pinkey Bullock or to Carlester Bullock -- both passengers -- such a conclusion would not absolve defendants from liability to them. Counsel for defendants virtually conceded this when he stated while making his motion " ... certainly in the case of Daniel Bullock, the driver of this car ..." this is so. (Tr. 326)

To be sure, defendants' witnesses gave varying accounts of the happening which were in conflict with the plaintiffs' version. However, the physical facts, e. g. tire-marks, complete demolition of automobile, reaction time and distance - went far toward corroborating Bullock's testimony rather than supporting defendants' version.

By applying simple mathematics to the physical evidence, without regard to Bullock's testimony, the jury was almost bound to conclude that the accounts given by the defendants' witnesses were not in accord with the actual facts. This is so because if the automobile started across the highway and was moving at any speed whatsoever, it would have traversed the mere 20 feet of highway, and been safely out of the way by the time the bus travelled the 185 feet (length of the tire-marks

to point of impact), plus some additional 45 or 50 feet which the vehicle travelled during the 3/4 second reaction time.[2] It is significant in this regard, that defendants' witnesses say that the car "shot out" in front of the bus. One of them even said "very fast" (Mrs. Campbell).

At best, the defendants' evidence did no more than establish a conflict in the evidence, thus furnishing a clear area for the jury's function.

CONCLUSION

WHEREFORE, it is respectfully submitted that the plaintiffs' evidence, consisting of direct credible testimony buttressed by physical evidence and the testimony of the expert witness, was more than adequate to support a verdict in favor of the plaintiffs; and the court's refusal to submit it to the jury for its consideration was a usurpation of that body's function, and reversible error.

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Attorneys for Appellants

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[2] Reaction time is described as that period between awareness of danger and emergency action which results in laying down tire-marks. It is said that a vehicle travels in feet per second 1 1/2 times miles per hour.

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JOINT APPENDIX

331 [Filed June 3, 1955]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

THOMAS BULLOCK, Administrator of the Estate of Pinkey Bullock
812 - 4th Street, S. W.
Washington, D. C.

Plaintiff

vs

Civil Action No. 2439-'55

PENNSYLVANIA GREHOUND LINES, INC.,
a corporation
1110 New York Avenue, N. W.
Washington, D. C.

and

HARRY H. BUCHANAN
117 Irving Street
Laurel, Maryland

Defendants

COMPLAINT FOR NEGLIGENCE CAUSING DEATH

This is an action brought by plaintiff, Thomas Bullock, as administrator of the Estate of Pinkey Bullock, deceased. Plaintiff is an adult citizen of the United States and a resident of the District of Columbia. The United States District Court for the District of Columbia, holding a probate court, on the 26th day of August, 1954, issue letters of administration to the plaintiff, Thomas Bullock, son of the deceased.

1. The amount in controversy herein exceeds Three Thousand ($3,000.00) Dollars, exclusive of court costs and interest, and the matter is within the jurisdiction of this Court under Sec. 11-306 of the District of Columbia Code (1940).

2. The defendant, Pennsylvania Grehound Lines, Inc., is a corporation doing business in the District of Columbia, and the defendant,

Harry H. Buchanan, is a resident of the Town of Laurel, State of Maryland, living at 117 Irving Street.

3. For that heretofore, to wit, on or about the 6th day of June, 1954, the defendant, Pennsylvania Grehound Lines, Inc., was the owner of a 1948 GMC automobile coach or bus, engaged in interstate transportation of passengers for hire. That on said date, at approximately 6:00 A. M., said bus was being operated by the defendant, Harry H. Buchanan,
332 a regular employed servant, agent and employee of the said bus company, in a Northerly direction upon the Washington Boulevard, in or near the town of Halethorpe in Baltimore County, State of Maryland. That at the same time, the deceased son of Pinkey Bullock and brother of this plaintiff, was carefully and prudently operating his 1953 DeSoto Sedan in a Westerly direction at the intersection of the Washington Boulevard with the entrance to the General Motors Plant located in Halethorpe, Maryland. The said Pinkey Bullock was a guest in the automobile driven by her late son, but the said Defendant Buchanan operated and drove the aforementioned bus in such a careless, reckless and negligent manner without proper lookout and in complete disregard of the rights of others properly using said highway, or entering thereupon and at such a reckless and excessive rate of speed that he did not have control thereof and therefore rammed the said bus into the automobile driven by the late Daniel M. Bullock, son of the deceased, with great force and violence, thereby causing the said Pinkey Bullock to sustain severe and painful injuries which resulted in her death on the same day and shortly thereafter.

4. By reason of the permanent liability, acute suffering and subsequent death wrongfully caused, as aforesaid, by the careless, negligent and illegal operation by the defendant, Harry H. Buchanan, of the bus owned by the defendant, Pennsilvania Grehound Lines, Inc., the sons of the deceased, Thomas Bullock, Jeremiah Bullock, Dock Bullock, Raymond Bullock, Oscar Bullock and the daughters of the deceased, Edna Lightfoot, Marjorie Bryant and Mary Hester Rouse, being her heirs and next of kin were caused great grief and mental anguish and

were prematurely deprived of their mother's love, companionship and advice, and the inheritance which she by her personal efforts and gainful employment would have accumulated in her estate had she not been the victim of the defendants' negligence, wrongful and unlawful conduct.

333 5. And the plaintiff says that the accident causing the death of Pinkey Bullock was caused solely by the negligence of the defendants and without any negligence on the part of the driver of the car in which the said Pinkey Bullock was a guest thereunto directly contributing and the plaintiff further states that the death of the said Pinkey Bullock occurred within one year before the commencement of this suit; that said death occurred on June 6, 1954, and that this suit is instituted on the 3rd day of June, 1955, and that the wrongful acts, neglect and default of the defendant were such that had not death ensued, would have entitled the said Pinkey Bullock to maintain an action against the defendants and to recover damages in respect thereof.

WHEREFORE, this suit is brought and the plaintiff claims Seventy-five Thousand ($75,000.00) Dollars and costs.

COBB, HOWARD and HAYES
Attorneys at Law
613 - F Street, N. W.

By /s/ George E. C. Hayes

PLAINTIFF DEMANDS
JURY TRIAL.

/s/ George E. C. Hayes

/s/ W. A. C Hughes, Jr.
343 Dolphin Street
Baltimore 17, Maryland

/s/ Juanita Jackson Mitchell
1239 Druid Hill Avenue
Baltimore, Maryland

Attorneys for Plaintiff

334 [Filed June 24, 1955] Civil Action No. 2439-55

ANSWER OF DEFENDANTS

Now come the defendants, Pennsylvania Greyhound Lines, Inc. and Harry H. Buchanan, by their attorneys, McInerney & McCarthy,

and for answer to the Complaint filed herein state that they are not required to answer the preamble paragraph of the Complaint except that they will admit that letters of administration were issued to Thomas Bullock on August 26, 1954, and further that they are not required to answer the allegations contained in Paragraph One (1); admit the allegations contained in Paragraph Two (2); regarding paragraph Three (3) admit the ownership of the vehicle described therein and that it was operated by Harry H. Buchanan but deny each and every other allegation contained in this paragraph; regarding the allegations contained in Paragraph Four (4) state that they have insufficient information with which to form a belief and deny the same; deny the allegations contained in Paragraph Five (5); and for a

FIRST DEFENSE, state that the Complaint fails to allege a cause of action either in law or in fact upon which relief can be granted to the
335 plaintiff by this Court in this cause of action; and for a

SECOND DEFENSE, state that the deceased, Pinkey Bullock, was guilty of contributory negligence and the contributory negligence of the deceased, Pinkey Bullock, is attributed to Thomas Bullock, the Administrator, and precludes any recovery in this action from the defendants; and for a

THIRD DEFENSE, state that the damages alleged are not recoverable from these defendants; and for a

FOURTH DEFENSE, state that the motor vehicle of the defendant, Pennsylvania Greyhound Lines, Inc. was being operated in a careful and prudent manner by the defendant, Harry H. Buchanan, at the time and place alleged but that Daniel M. Bullock at the time and place alleged operated his motor vehicle in a careless and negligent manner and the death of the deceased, Pinkey Bullock, was due to the negligence and carelessness of Daniel M. Bullock and not any negligence or carelessness on the part of these defendants.

McINERNEY & McCARTHY
617 Albee Building
1426 G Street, N. W.
Attorneys for Defendants

By /s/ W. McInerney
Wilbert McInerney

[Certificate of Service]

336 [Filed Apr. 17, 1957]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS BULLOCK, Administrator of the Estate of Pinkey Bullock Plaintiff vs PENNSYLVANIA GREYHOUND LINES, INC. a corporation HARRY H. BUCHANAN Defendants	)	Civil Action No. 2439-55
THOMAS BULLOCK, Administrator of the Estate of Daniel M. Bullock Plaintiff vs PENNSYLVANIA GREYHOUND LINES, INC. a corporation HARRY H. BUCHANAN Defendants	)	Civil Action No. 2440-55
CARLESTER BULLOCK Plaintiff vs PENNSYLVANIA GREYHOUND LINES, INC. a corporation HARRY H. BUCHANAN Defendants	)	Civil Action No. 3150-56

ORDER FOR CONSOLIDATION

Upon oral motion made by the defendant for consolidation of the above-entitled causes of action, and after oral argument and opposition by the plaintiffs, it appearing to the court that the above-entitled causes of action should be consolidated, it is by the Court this 17 day of April, 1957,

337 ORDERED that the above-entitled causes of action be and the same are hereby consolidated for pretrial and for trial; and it is

FURTHER ORDERED, that on the calendar the cases shall be called when the first case is reached, that is, Thomas Bullock, Administrator of the Estate of Pinkey Bullock, Plaintiff vs. Pennsylvania Greyhound Lines, Inc., and Harry H. Buchanan, Defendants, Civil Action No. 2439-55.

/s/ Alexander Holtzoff
JUDGE

[Certificate of Service]

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338 [Filed Oct. 24, 1957] Civil Action No. 2439-55

VERDICT AND JUDGMENT

This cause having come on for hearing on the 22nd day of October, 1957, before the Court and a jury of good and lawful persons of this district, to wit:

Arthur Ruderman	Mortimer B. Daniels
Arnold Wexler	Mary B. McCarter
Helen M. McNair	Beulah M. Frye
Warren A. Wagner	Samuel E. Stonnell
Clara B. M. Swallen	Dolores C. Ferris
Manuel Abney	Mercedes B. Payton

who, after having been duly sworn to well and truly try the issues between Thomas Bullock, Administrator of the Estate of Pinky Bullock, plaintiff and Pennsylvania Greyhound Lines, Inc. a corporation, and Harry H. Buchanan, defendants, and after this cause is heard and given to the jury in charge, they upon their oath say this 24th day of October, 1957, that they find for the defendants against said plaintiff by direction of Court.

WHEREFORE, it is adjudged that said plaintiff take nothing by this action, that said defendants go hence without day, be for nothing held and recover of plaintiff their costs of defense.

By direction of

Judge Edward M. Curran

HARRY M. HULL, Clerk,

By /s/ Anne W. Lyddone
Deputy Clerk.

341 [Filed Dec. 2, 1957] Civil Action No. 2439-55

NOTICE OF APPEAL

Notice is hereby given this second day of December, 1957, that the plaintiff, Thomas Bullock, Administrator of the Estate of Pinkey Bullock, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 14th day of November, 1957, in favor of defendants, Pennsylvania Greyhound Lines and Harry H. Buchanan against said plaintiff, Thomas Bullock, Administrator of the Estate of Pinkey Bullock.

COBB, HOWARD & HAYES

By /s/ James A. Cobb
/s/ William B. Bryant
Attorney for Plaintiff

613 F St., N. W.

[Certificate of Service]

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345 [Filed June 3, 1955]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

THOMAS BULLOCK, Administrator :
of the Estate of DANIEL M. BULLOCK.
812 - 4th Street, S. W.
Washington, D. C. :
Plaintiff

vs : Civil Action No. 2440-55

PENNSYLVANIA GREYHOUND LINES, INC.
a Corporation
1110 New York Avenue, N. W. :
Washington, D. C.

and :

HARRY H. BUCHANAN
117 Irving Street
Laurel, Maryland :
Defendants :

COMPLAINT FOR NEGLIGENCE CAUSING DEATH

This is an action brought by plaintiff, Thomas Bullock, as administrator of the Estate of Daniel M. Bullock, deceased. Plaintiff

is an adult citizen of the United States and a resident of the District of Columbia. The United States District Court for the District of Columbia, holding a probate court, on the 26th day of August, 1954, issued letters of administration to the plaintiff, Thomas Bullock, brother of the deceased.

1. The amount in controversy herein exceeds Three Thousand ($3,000.00) Dollars, exclusive of court costs and interest, and the matter is within the jurisdiction of this Court under Sec. 11-306 of the District of Columbia Code (1940).

2. The defendant, Pennsylvania Greyhound Lines, Inc., is a corporation doing business in the District of Columbia, and the defendant, Harry H. Buchanan, is a resident of the Town of LAUREL, State of Maryland, living at 117 Irving Street.

3. For that heretofore, to wit, on or about the 6th day of June, 1954, the defendant, Pennsylvania Greyhound Lines, Inc., was the owner of a 1948 GMC automobile coach or bus, engaged in interstate transportation of passengers for hire. That on said date, at approximately 6:00 A.M., said bus was being operated by the defendant,

346 Harry H. Buchanan, a regular employed servant, agent and employee of the said bus company, in a northerly direction upon the Washington Boulevard, in or near the town of Halethorpe in Baltimore County, State of Maryland. That at the same time, Daniel M. Bullock, deceased husband of Carlester Bryant Bullock and brother of the plaintiff, was carefully and prudently operating his 1953 DeSoto Sedan in a Westerly direction at the intersection of the Washington Boulevard with the entrance to the General Motors Plant located in Halethorpe, Maryland. The said Carlester Bryant Bullock was a guest in the automobile driven by her late husband, Daniel M. Bullock, but the said defendant, Harry H. Buchanan, operated and drove the aforementioned bus in such a careless, reckless and negligent manner without proper lookout and in complete disregard of the rights of others properly using said highway, or entering thereupon and at such a reckless and excessive rate of speed that he did not have control thereof and,

therefore, rammed the said bus into the automobile driven by the late Daniel M. Bullock with great force and violence, thereby causing the said Daniel M. Bullock to sustain severe and painful injuries in and about his head, body and limbs, which said injuries caused his death on the same day and shortly thereafter.

4. As a direct consequence of the death of her said husband and brother of this plaintiff, the said wife, Carlester Bryant Bullock, has been deprived of and has forever lost the services, support, assistance and consortium of her late husband which she would have continued to enjoy had her husband lived; that by reason of the negligent and wrongful act of the defendant by and through its servant, agent and employee, a cause of action has accrued to and on behalf of the administrator of the late Daniel M. Bullock for compensation to her for the pecuniary losses including medical and funeral expenses, which she has sustained through and by reason of the aforementioned negligent and wrongful act of the Defendant, its employee, agent and servant which caused the death of her said husband; and plaintiff states further that the widow of the

347 deceased has been caused great grief and mental anguish by being prematurely deprived of her husband's love and affection, companionship and advice and of the inheritance which she, by his personal efforts and gainful employment would have accumulated in his estate had he not been the victim of the defendants' wrongful and negligent conduct.

5. Plaintiff states further that the accident causing the death of Daniel M. Bullock was caused solely by the negligence of the defendant driver, and without any negligence on the part of the late Daniel M. Bullock thereunto directly contributing and the plaintiff further states that the death of said Daniel M. Bullock occurred within one year before the commencement of this suit; that said death occurred on June 6, 1954, and that this suit is instituted on the 3rd day of June, 1955, and that the wrongful acts, neglect and default of the defendants were such that had not death ensured, would have entitled the said Daniel M. Bullock to maintain an action against the defendants and to recover damages in respect thereof.

WHEREFORE, this suit is brought and the plaintiff claims Seventy-five Thousand ($75,000.00) Dollars damages and costs.

COBB, HOWARD and HAYES
613 - F Street, N. W.

by:

/s/ George E. C. Hayes

/s/ W. A. C. Hughes, Jr.
343 Dolphin Street
Baltimore 17, Maryland

/s/ Juanita Jackson Mitchell
1239 Druid Hill Avenue
Baltimore, Maryland

Attorneys for Plaintiff

PLAINTIFF DEMANDS JURY TRIAL

/s/ George E. C. Hayes

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348 [Filed June 24, 1955] Civil Action No. 2440-55

ANSWER OF DEFENDANTS

Now come the defendants, Pennsylvania Greyhound Lines, Inc., and Harry H. Buchanan, by their attorneys, McInerney & McCarthy, and for answer to the Complaint filed herein state that they are not required to answer the preamble paragraph of the Complaint except that they will admit that letters of administration were issued to Thomas Bullock on August 26, 1954; that they are not required to answer the allegations contained in Paragraph One (1); admit the allegations contained in Paragraph Two (2); regarding Paragraph Three (3) admit the ownership of the vehicle described therein and that it was operated by Harry H. Buchanan but deny each and every other allegation contained in this paragraph; regarding the allegations contained in Paragraph Four (4) state that they have insufficient information with which to form a belief and deny the same; deny the allegations contained in Paragraph Five (5); and for a

FIRST DEFENSE, state that the Complaint fails to allege a cause of action either in law or in fact which would entitle the plaintiff to relief by the Court in this action; and for a

349 SECOND DEFENSE, state that the deceased, Daniel M. Bullock, was guilty of contributory negligence and the contributory negligence of the deceased, Daniel M. Bullock, is attributed to Thomas Bullock, the Administrator, and precludes any recovery in this action from the defendants; and for a

THIRD DEFENSE, state that the damages alleged are not recoverable from these defendants; and for a

FOURTH DEFENSE, state that the motor vehicle of the defendant, Pennsylvania Greyhound Lines, Inc. was being operated in a careful and prudent manner by the defendant, Harry H. Buchanan, at the time and place alleged but that Daniel M. Bullock at the time and place alleged operated his motor vehicle in a careless and negligent manner and his death was due to negligence and carelessness of his part and not any negligence and carelessness on the part of these defendants.

McINERNEY & McCARTHY
617 Albee Building
1426 G Street, N. W.
Attorneys for Defendants

By /s/ W. McInerney
Wilbert McInerney

[Certificate of Service]

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350 [Filed Oct. 24, 1957] Civil Action No. 2440-55

VERDICT AND JUDGMENT

This cause having come on for hearing on the 22nd day of October, 1957, before the Court and a jury of good and lawful persons of this district, to wit:

Arthur Ruderman	Mortimer B. Daniels
Arnold Wexler	Mary B. McCarter
Helen M. McNair	Beulah M. Frye
Warren A. Wagner	Samuel E. Stonnell
Clara B. M. Swallen	Dolores C. Ferris
Manuel Abney	Mercedes B. Payton

who, after having been duly sworn to well and truly try the issues between Thomas Bullock, Administrator of the Estate of Daniel M. Bullock, plaintiff, and Pennsylvania Greyhound Lines, Inc., a corporation, and Harry H. Buchanan, defendants, and after this cause is heard and given to the jury in charge, they upon their oath say this 24th day of October, 1957, that they find for the defendants against said plaintiff by direction of Court.

WHEREFORE, it is adjudged that said plaintiff take nothing by this action, that said defendants go hence without day, be for nothing held and recover of plaintiff their costs of defense.

HARRY M. HULL, Clerk

By direction of

By /s/ Anne W. Lyddone
Deputy Clerk.

Judge Edward M. Curran

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352 [Filed Dec. 2, 1957] Civil Action No. 2440-55

NOTICE OF APPEAL

Notice is hereby given this second day of December, 1957, that the plaintiff, Thomas Bullock, Administrator of the Estate of Daniel Bullock, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 14th day of November, 1957, in favor of defendants, Pennsylvania Greyhound Lines and Harry H. Buchanan against said plaintiff, Thomas Bullock, Administrator of the Estate of Daniel Bullock.

COBB, HOWARD & HAYES

By /s/ James A. Cobb
/s/ William B. Bryant
Attorney for Plaintiff

613 F St., N.W.

[Certificate of service]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CARLESTER BULLOCK
801 E Street, S. W.
Washington, D. C.

Plaintiff

vs

PENNSYLVANIA GREYHOUND LINES, INC.
a corporation
1110 New York Avenue, N. W.
Washington, D. C.

and

HARRY H. BUCHANAN
117 Irving Street
Laurel, Maryland

Defendants

Civil Action No. 3150-56

COMPLAINT FOR NEGLIGENCE

The complaint of Carlester Bullock sets forth as follows:

1. The amount in controversy herein exceeds Three Thousand ($3,000.00) Dollars, exclusive of court costs and interest, and the matter is within the jurisdiction of this Court under Sec. 11-306 of the District of Columbia Code (1940).

2. The plaintiff is a citizen of the United States and a resident of the District of Columbia and brings this suit in her own right. The defendant, Pennsylvania Greyhound Line, Inc., is a corporation doing business in the District of Columbia and is sued as the owner of the bus involved in the accident under conditions hereinafter set forth; and the defendant, Harry H. Buchanan, is a resident of Laurel, Maryland, and is sued in his own right and as the operator of the said bus, and an agent and employee of the defendant corporation.

3. On Sunday, June 6, 1954, the plaintiff was a passenger in an automobile driven by her brother-in-law, Daniel M. Bullock, at approximately 6:00 A.M. on the Washington Boulevard near Hale Thorpe in the County of Baltimore, Maryland. A bus owned by the defendant corporation and driven by the defendant, Harry M. Buchanan collided with the automobile driven by Daniel M. Bullock. The said collision was caused

by the wrongful, careless and negligent driving of the defendant, Harry
357 H. Buchanan, in that he did drive the bus at an unlawful and excessive speed and in violation of the law of the jurisdiction in which the accident occurred; and did, further, in violation of the law, fail to give proper time and attention to his driving, and but for said failure to give proper time and attention and the excessive speed at which he was driving, the said Harry H. Buchanan would have been able to observe the car of Daniel M. Bullock on the roadway of the aforementioned boulevard, and would have been able to avoid the said accident as he was legally obligated to do.

4. As a result of all of the foregoing, and because of the acts of negligence of the defendant driver, the plaintiff received a fracture of the left third rib, fracture lower third left ulma, fracture of the sacrum, facture of left pelvis and contusion of lower left leg, was prevented from transacting her business, suffered great pain of body and mind and sustained injuries of an extremely painful nature and lasting character; and incurred expenses for medical attention in the amount of Three Hundred Eighty six ($386.00) Dollars.

WHEREFORE, plaintiff demands judgment against defendant, Harry H. Buchanan, or against defendant, Pennsylvania Greyhound Lines, Inc., or against both in the sum of Twenty Thousand ($20,000.00) Dollars and costs.

COBB, HOWARD and HAYES
Attorneys at Law
613 - F Street, N. W.
By

/s/ Leonard S. Hayes

/s/ W. A. C Hughes, Jr.
Dolphin Street
Baltimore 17, Md.

/s/ Juanita J. Mitchell
1239 Druid Hill Avenue
Baltimore, Maryland
Attorneys for Plaintiff

Plaintiff demands jury Trial.

/s/ Leonard S. Hayes

358 [Filed Aug. 13, 1956] Civil Action No. 3150-56

ANSWER

Now come the defendants Pennsylvania Greyhound Lines, Inc. and Harry H. Buchanan, by their attorneys, McInerney & McCarthy, and for answer to the Complaint filed herein state that they are not required to answer the allegations contained in Paragraph One (1); admit the allegations contained in Paragraph Two (2); deny the allegations contained in Paragraph Three (3); have insufficient information with which to form a belief regarding the allegations contained in Paragraph Four (4) and deny the same; and for a

FIRST DEFENSE, states that the Complaint fails to allege a cause of action either in law or in fact which would entitle the plaintiff to recover from the defendants; and for a

359 SECOND DEFENSE state that the motor vehicle of the defendant was being operated in a careful and prudent manner by the operator and at the time and place alleged in the Complaint the operator of the motor vehicle in which the plaintiff was riding as a passenger was operating the motor vehicle in a careless and reckless manner and by reason thereof the injuries and damages, if any, of the plaintiff were caused by the negligence and carelessness of the operator of the motor vehicle in which he was riding as a passenger and were not due to any negligence or carelessness of the defendants.

McINERNEY & McCARTHY
617 Albee Building
1426 G Street, N. W.
Attorneys for Defendants

By /s/ W. McInerney
Wilbert McInerney

[Certificate of Service]

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360 [Filed Oct. 24, 1957] Civil Action No. 3150-56

VERDICT AND JUDGMENT

This cause having come on for hearing on the 22nd day of October, 1957, before the Court and a jury of good and lawful persons of this district, to wit:

Arthur Ruderman	Mortimer B. Daniels
Arnold Weller	Mary B. McCarter
Helen M. McNair	Beulah M. Frye
Warren A. Wagner	Samuel E. Stannell
Clara B. M. Swallen	Dolores C. Ferris
Manuel Abney	Mercedes B. Payton

who, after having been duly sworn to well and truly try the issues between Carlester Bullock, plaintiff, and Pennsylvania Greyhound Lines, Inc., a corporation, and Harry H. Buchanan, defendants, and after this cause is heard and given to the jury in charge, they upon their oath say this 24th day of October, 1957, that they find for the defendants against said plaintiff by direction of Court.

WHEREFORE, it is adjudged that said plaintiff take nothing by this action, that said defendants go hence without day, be for nothing held and recover of plaintiff their costs of defense.

HARRY M. HULL, Clerk,

By direction of
Judge Edward M. Curran

By /s/ Anne W. Lyddane
Deputy Clerk.

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362 [Filed Dec. 2, 1957] Civil Action No. 3150-56

NOTICE OF APPEAL

Notice is hereby given this second day of December, 1957, that the plaintiff, Carlester Bullock hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 14th day of November, 1957, in favor of defendants, Pennsylvania Greyhound Lines and Harry H. Buchanan against said plaintiff, Carlester Bullock.

COBB, HOWARD & HAYES

By /s/ James A. Cobb
/s/ William B. Bryant
Attorney for Plaintiff
613 F St., N.W.

[Certificate of Service]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

41 OSCAR LEON BULLOCK,

called as a witness by counsel for plaintiffs and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRYANT:

* * *

Q. Now directing your attention to June 6th, of 1954, some

42 time in the early morning around six o'clock, do you remember where you were? A. Yes, sir.

Q. Where were you? A. En route to Brooklyn, New York.

Q. And how were you traveling? A. By automobile.

Q. Whose automobile was it? A. My brother's.

Q. What kind of a car was it? A. A '53, four-door, Firedome DeSoto.

Q. Who was in the automobile with you? A. My brother, my sister-in-law, my mother and I.

Q. Who was driving? A. My brother was.

Q. Where were you sitting? A. I was sitting in the right front.

Q. The passenger side, front seat? A. Yes, sir.

Q. Do you remember where your mother was sitting? A. Yes, sir; I do.

Q. And your sister-in-law? A. Yes.

Q. Where were they sitting? A. My mother was sitting in the left rear, behind the driver.

43 Q. And your sister-in-law? A. My sister-in-law was sitting in the right rear.

THE COURT: What is her name?

THE WITNESS: Carlester Bullock.

BY MR. BRYANT:

Q. And she was the wife of Daniel Bullock? A. Yes, sir; she was.

THE COURT: And the brother you have referred to who was driving is Daniel?

THE WITNESS: Daniel M. Bullock, sir.

THE COURT: Your sister-in-law was in the rear, too?

THE WITNESS: Yes, sir, she was.

THE COURT: The right rear?

THE WITNESS: The right rear, sir.

THE COURT: And you were next to the driver?

THE WITNESS: Yes, sir; I was.

BY MR. BRYANT:

Q. Now, sir, you say you were on your way to Brooklyn -- is that right? A. Yes, sir; we were.

Q. Now did there come a time that anything unusual happened to you? A. Well, a Greyhound bus ran into us, yes, sir.

44 Q. And let me ask you this: Where were you when that happened? Do you remember? A. We were at a General Motors drive-in, on the Baltimore Boulevard.

Q. Now do you remember how you came to be there? A. Yes, sir; I do.

Q. Tell us what happened. A. Well, we missed the turn to lead us on to 40, to bypass Baltimore.

Q. I am sorry, sir; I can't quite understand you. You say you missed the turn that would what? A. That would take us on to the freeway, which is 40, to bypass Baltimore.

Q. All right. A. And we missed the turn there. So I called to my brother's attention that we had missed the road that we intended to have taken. So I told him to go until we find a place to turn around. So we did, sir.

Q. And that was the General Motors place you are talking about? A. Yes, sir.

Q. Tell us what happened there. A. So we went into the driveway, pulled up to the stop, backed up and made a turn around. There was a stop-sign on the right side.

45 Q. On the right side of the driveway as you come back onto the road? A. Yes, sir.

Q. Go ahead. A. We came up and stopped, before going onto the highway. We checked the traffic to the left. Then I looked to my right.

Q. How far could you see to the left? A. All the way to the curve, sir.

Q. How far was the curve, would you say? A. The curve was over six hundred yards, sir, I would say.

Q. You say the curve from where you were sitting was about 600 yards away? A. Yes, sir.

Q. Now was there anything there? A. There was nothing there.

Q. And what else did you do? Tell us. Go ahead. A. Then I check to my right. There was some traffic, southbound traffic.

Q. And was that going in the same direction that you wanted to go? A. Yes, sir; it was.

Q. All right. Tell us what happened. A. And after checking it, we moved on to the highway. And when I looked back to my left, that
46 is when I saw the bus.

Q. Now when you saw the bus, was your automobile moving? A. We were perfectly still, sir.

Q. Where was your automobile in relationship to the northbound traffic lane? A. Well, we were astraddle of the northbound traffic lane, sir.

THE COURT: There were two traffic lanes going north, weren't there?

THE WITNESS: Yes, sir; there is.

THE COURT. What do you mean? You were across both of them?

THE WITNESS: No, sir; we hadn't crossed the center line, sir.

THE COURT: I am not talking about the center line. I am talking about the two lanes that are going north. Were you straddling both of those lanes, or just one?

THE WITNESS: I am not sure, sir. Maybe we were.

BY MR. BRYANT:

Q. Now when you saw the bus, about how far was the bus away from you? A. The bus was on the bridge, sir.

47 Q. Well, about how far was that away from you? A. That is over 300 yards away, sir.

Q. And did you notice anything about it at that time that attracted your attention? A. Well, I noticed it was coming at a rapid rate of speed, sir.

Q. Did you say anything or do anything at that time? A. At the time, I did not.

Q. Did there come a time that you did say something or do something? A. Yes, sir; I did.

Q. And when was that? A. When I saw that the bus was going to hit us.

Q. What did you say, if anything? A. I told my brother, who goes by the nickname of "Bus" I said, "Oh my god, Bus, this bus is going to hit us."

Q. What happened then? A. And it did, sir.

Q. Now, the best you can recall it, tell us what happened from the time it did hit you.

* * *

48 Q. Now from the time that the bus hit you, up to the time they took you away, tell us as best you can what you did and what you saw. A. Well, sir, after the bus hit us, my right door was buckled open, and my brother was knocked over on me. And in my reaching for my door, I realized that the car was still being pushed up the highway. So I was trying to hold the door and hold my brother from coming out and forcing me out. And finally the bus came to a rest and the car went a distance from the bus, and it came to a rest. And then, after both had come to a rest, I got out the best I could, and tried to help my brother from coming out on his head; also my sister-in-law, who was in the back.

* * *

49 Q. Now I believe you said that when you saw the bus it was coming off the bridge, at a rapid rate of speed. What speed would you say it was doing? A. No less than 60 miles an hour, sir.

MR. MC CARTHY: Did you say 60, or 65?

THE WITNESS: Sixty, sir -- no less than 60, sir.

THE COURT: Do you drive an automobile?

THE WITNESS: Yes, sir; I am a cab driver in this city.

THE COURT: How long have you been driving?

THE WITNESS: Eight years, sir.

THE COURT: And you judged this speed by looking at a car coming towards you?

THE WITNESS: Yes, sir. I would say it was doing no less than 60, sir.

THE COURT: All right.

* * *

52 Q. Do you know what the posted speed was at that time for that area where the accident occurred? A. I do, sir.

Q. What was it? A. Forty; 35 for trucks.

CROSS EXAMINATION

BY MR. MCCARTHY:

Q. Mr. Bullock, what time did your party leave Washington that morning? A. I do not know, sir.

Q. Have you any idea? A. No, sir; I do not.

Q. Did you make any stops after leaving your residence in Washington before this accident occurred? A. No, sir; we didn't.

Q. Do you know how long it might have taken you to get from the point in Washington where you left to the point

53 where this accident occurred? A. No, sir.

Q. Don't you have any recollection of that at all? A. No, sir.

Q. You have described the seating arrangement in the car, and then you mentioned about the turn. You called your brother Daniel's attention to the fact that he had missed his turn? A. I did, sir.

Q. Was he unfamiliar with this road? A. Yes, sir.

Q. Well, were you familiar with it? A. No, sir. That is why I was watching so.

* * *

Q. Oh, you were doing the watching, and he was driving? A. He was watching, also.

Q. Now, then, who was it that discovered the General Motors plant there and the little road that runs to the right off of No. 1? A. He did, sir.

Q. He saw that. Are you aware, Mr. Bullock, that there is a great parking lot back at one end of this little

54 road, this little secondary road? A. I don't understand you, sir.

Q. Did you see a parking lot back there for cars of the employees who worked at the General Motors plant? A. No, sir; I didn't.

Q. I see. When your brother came down the old, wrong road, the Washington Boulevard, and turned into the GM, did he go in any distance, or did he just make what we will describe as a U turn? A. He went in, sir.

Q. How far in did he go?

* * *

A. He went into the driveway, and pulled up to the stile, and backed up and backed back and came straight toward the highway.

Q. I see. Now then, off of No. 1, how far in on this little road did he go in making his turn? A. Well, I couldn't give you any --

Q. Did he go a hundred feet, or did he just go 10 or 15 feet? A. I couldn't give you any feet, sir.

Q. But he pulled in and made a hard right turn? A. Yes, sir; he went in.

Q. He went in a certain distance, which you now don't

55 know. Is that correct? A. I don't know about the distance.

Q. Then he backed up a bit? A. Yes, sir.

Q. In the meanwhile maneuvering his car around to come back

out on No. 1? A. Straight toward No. 1.

Q. When you got to the stopsign, did your brother stop? A. Yes, sir; he did.

Q. Were you paying attention to the operation of the car at this time? A. Well, I was watching traffic, sir.

Q. You were watching the traffic? A. Yes, sir.

Q. But you know for certain that he actually stopped his vehicle? A. Yes, sir.

Q. At the stopsign? A. Well, we stopped before entering the highway, sir. The stopsign is a little ways back, sir.

* * *

56 Q. Now when you stopped, you were sitting in the right front seat. Was the stopsign about abreast of you in the right front seat? A. I don't know where the stopsign was, sir.

Q. In other words, was the car stopped behind the stopsign, or in front of it, as far as the No. 1 highway was concerned? A. Well, sir, stopping behind it you couldn't see the highway.

Q. What would prevent you from seeing the highway? A. There is a house on the corner, which had a high hedge, and there is about a two or three feet stone wall.

Q. And the hedge on top of the wall? A. Yes, sir.

Q. And there is a big tree there, too, isn't there? A. I don't know, sir, about the tree.

Q. It is true, though, isn't it, Mr. Bullock, that if you stop at the stopsign with your front bumper just even with the stopsign, a driver of a car could not see to his left down the slow lane? A. I could, sir.

Q. You could?

57 A. Yes, sir.

Q. What about the driver, if you know? A. I don't know about the driver, sir.

Q. Well now, he might or might not be able to see. Is that correct? A. I don't know, sir.

THE COURT: How far down this highway could you see?

THE WITNESS: I could see to the curve.

THE COURT: How far is that?

THE WITNESS: Over 600 yards, sir.

THE COURT: You could see down the Baltimore highway 600 yards?

THE WITNESS: Yes, sir; I could.

THE COURT: All right.

* * *

58 Q. All right. Now will you tell me where your car was when you first saw the bus? A. We were already on the highway, sir.

* * *

Q. So that from your seat you didn't see this bus while you were stopped at the stopsign at all?

59 A. No, sir; there was nothing.

Q. And in answer to His Honor's questions earlier, you said you may have been straddling both of the northbound lanes when you first saw the bus? A. We might have been, sir.

Q. You might have been? A. Yes, sir.

Q. You don't know that with any certainty, then, do you? A. No, sir; I do not.

Q. So that you could, for all you know, have been completely in the slow, northbound lane, or completely in the fast, northbound lane? Is that correct? A. That is right, sir.

Q. And the bus you described as being on the bridge when you first saw it? A. When I first saw the bus, sir.

Q. And at that time were you moving or standing? A. We were standing perfectly still, sir.

Q. And what caused you to stand perfectly still, blocking one or both of the northbound lanes? A. There was traffic southbound, traffic coming from our right, sir.

Q. How much traffic? A. Well, quite a bit of traffic, sir.

60 Q. Well, would you say two or three cars, or 20 or 30 cars?

A. Well, I would say definitely that it was over two or three, sir.

Q. Over two or three? A. Yes, sir.

Q. And that bus is still 600 yards away at that point? A. Well, I don't know where the bus was then, sir. When I first saw the bus, it was on the bridge.

Q. Didn't you estimate the bridge to be 600 yards away?

A. No, sir; I did not.

Q. Will you tell me how far away the bridge is, then?

A. The bridge is over 300 yards away.

Q. The bridge is over 300 yards away? A. Yes, sir.

Q. And at that time you were stopped? A. We were stopped.

Q. You were waiting for southbound traffic? A. Yes, sir; we were.

Q. Was this traffic truck traffic or private cars? A. Private cars, sir.

Q. All private cars? A. Yes, sir.

61 Q. And you had to remain out of motion to let these private cars pass, until right up to the moment of this impact? A. Yes, sir.

Q. You never moved your car, according to your recollection?

A. No, sir; we did not.

Q. And how much time transpired from the time you stopped your car, probably in the middle of these two lanes, until the impact?

A. Almost a minute, sir, I would say.

Q. You were there a whole minute? A. I would say almost a minute.

Q. You mean 60 seconds? A. Almost 60 seconds, sir.

Q. And when was it that you first became aware of the speed of the bus? A. When it jumped off the bridge, sir, over the little hill there.

Q. All right. Were its headlights on? A. Yes, sir; they were.

Q. The headlights were on? A. Yes, sir.

Q. Was it daylight or dusk? A. Daylight.

62 Q. But yet the headlights were on? A. They were, sir.

Q. And what did you estimate that speed to be as it came over the bridge? A. I would say no less than 60 miles an hour, sir.

Q. Now, Mr. Bullock, did you keep the bus in your vision from that point until the time of the accident? A. I did, sir.

Q. Did the bus ever reduce its speed? A. I don't know, sir.

Q. Well, you were looking at it. A. Yes, sir.

Q. Did it ever appear to you that the bus reduced its speed from the 60 miles an hour you have just testified to? A. Well, to tell the truth, sir, it looked as though it got faster, with those headlights coming on the way it was.

Q. It got faster? A. It seemed like to me it did.

Q. It appeared to be faster? A. Yes, sir.

Q. Do you have any idea of the speed of the bus at the moment of impact? A. No, sir; I do not.

Q. None at all?

63 A. No, sir.

Q. But you are sure it was going 60 miles an hour when you first saw it? A. I am not sure, sir.

Q. You recall, Mr. Bullock, being up in our office on October 1st of this year with your attorneys, and being questioned about this accident? A. Yes, sir; I do.

Q. Do you remember you took the oath at that time, and my partner questioned you and Mr. Moore, I believe, questioned you? A. Yes, sir; I do.

* * *

BY MR. MC CARTHY:

Q. Mr. Bullock, I am going to read you some questions and answers that were asked of you and given by you three weeks ago on October 1st. A question asked of you:

"How fast was the bus traveling?

"Answer: Well, I couldn't tell you that, sir.

"Question: What is your best estimate of the

speed?

"Answer: All I know is it was really coming.

"Question: When you say 'really coming,' what do you mean by 'really coming'? How long

64 have you been driving a car yourself?

"Answer: I have been driving a car since around '49.

"Question: Are you capable of estimating speeds?

"Answer: If I can see it going sideways.

"Question: But you couldn't if it was coming towards you?

"Answer: I cannot."

Now, Mr. Bullock, I am going to ask you why, three weeks ago on October 1st of this year, you were unable to estimate the speed of the bus, and yet today you can estimate it to a good 60 miles an hour? A. Well, sir, I was under the impression he wanted me to give an accurate speed, on his first question.

Q. You mean in this deposition you were giving -- which time did you think you were to be accurate? At the deposition, or here in court? A. At the deposition, sir.

Q. So that you testified accurately when your deposition was taken. A. I don't understand you, sir.

Q. So I assume, therefore, from what you have just said, that your testimony at the deposition was accurate testimony.

65 A. Yes, sir, to those questions.

Q. And you did say there, did you not, that you could not estimate the speed of the bus? A. I repeat, sir, I thought he wanted an accurate speed. So I didn't give him any speed.

Q. Now you have testified here it was 60 miles an hour. Is that accurate speed? A. No, sir.

Q. Well, how inaccurate is it? A. Well, I don't know, sir.

Q. Could it have been 30 miles an hour? A. He was going faster than 30 miles an hour.

Q. How do you know? A. Being a cab driver, I should be able to judge speed.

THE COURT: I thought you said in your deposition you couldn't estimate the speed unless you saw the bus sideways.

THE WITNESS: Well, sir, I was under the impression that he wanted me to give an accurate speed, is why I told him that.

BY MR. MC CARTHY:

Q. Then I can assume that your testimony here today is inaccurate on speed. Isn't that correct? A. It is to the best of my knowledge, sir.

66 Q. You said you gave accurate testimony at the deposition three weeks ago, when you said that because the bus was coming straight toward you, you couldn't estimate the speed. A. Not as well as when you see it going sideways.

Q. Then it could have been going 30 miles an hour, couldn't it, when you first saw it? Isn't that true?

Isn't it true, Mr. Bullock, that because you couldn't estimate it, it coming straight towards you, it could have been going as low as 30 miles an hour? A. Well, sir, I know the difference between 30 and 60, sir.

THE COURT: Could it have been going 30?

THE WITNESS: Sir?

THE COURT: Could it have been going 30?

THE WITNESS: It could have been, sir.

BY MR. MC CARTHY:

Q. Mr. Bullock -- and I am reading now, Your Honor, from page 11 of the same deposition -- here are a series of questions asked of you and answers given by you:

"Question: As you looked for traffic to the left, which would be the northbound traffic, how far down the highway could you see from where

the car was stopped at the stop sign?

"Answer: Well, I could see the top of the

67 hill probably from where I was sitting.

"Question: Can you estimate that distance?

"Answer: No, sir, I cannot."

Now when did you learn it was 600 yards? A. Sir, I took it upon myself to go back and measure it.

Q. When did you measure it? A. After the deposition, sir.

Q. Between October 1st and today? A. Yes, sir, I did.

Q. And how did you measure it? A. I walked it off.

Q. You stepped it off? A. Yes, sir; I did.

Q. Did it come to exactly 600 yards? A. Well, sir, I measured from the bridge to where we were hit, sir, which was over 300 yards.

Q. I see. Where does the 600 yards figure that you testified to come from? A. Well, from the curve to the place we were hit is twice the distance.

Q. As you looked back up that road to your left, could you see a curve? A. Yes, sir.

Q. And as you looked back up that road, looking to

68 your left, did that curve curve to the left or to the right?

A. The curve curved to the right.

Q. Who was with you when you measured this distance? Was anyone with you when you measured this distance? A. Yes, sir.

Q. Who was with you? A. My lawyer.

Q. Mr. Moore? A. And Mr. Bryant.

Q. Both Mr. Bryant and Mr. Moore were with you?

A. Yes, sir.

Q. Did you all three pace it off? A. Yes, sir.

Q. And you paced it to be 300 yards? A. Over 300 yards, sir, from the bridge to where we were hit.

Q. Was there any conversation in the car at all, Mr. Bullock, from the time you pulled off of No. 1 for your brother to begin to make his turn to go back south, any conversation between the passengers?

A. No, sir, no more than I told them we had missed the driveway. That is all.

Q. Was there any conversation between you and your brother when you were stopped at the stopsign? A. No, sir.

69 Q. None whatsoever? A. No conversation.

Q. Did you keep this bus in your view for the entire minute that you were stopped? A. Yes, sir; I did.

Q. And in that minute that bus was traveling a distance of 300 yards? A. Yes, sir.

Q. In that minute. A. In the time that we were out there, from the time I saw the bus.

Q. Now when you first saw the bus, you were stopped, weren't you, and you were in the middle of the road? A. We were already in the middle of the road when I first saw the bus, sir.

Q. All right. And you sat there one minute? A. No, sir; I wouldn't say a minute. It was almost a minute, I would say.

Q. Well, I thought you said a minute, because I asked you did you mean 60 seconds, and I thought you said yes. A. Yes, I said almost 60 seconds.

Q. I don't want to confuse you, Mr. Bullock; but I do want you to give us your very best recollection, accurate recollection, of these events.

70 A. Yes, sir.

Q. You pulled out in the center of the street and you stopped. A. Yes, sir.

Q. You stopped because of a concentration of southbound passenger-car traffic. A. Yes, sir.

Q. And would you characterize that as heavy traffic or light traffic? A. Well, I would say it was medium traffic, sir.

Q. Medium traffic? A. Yes, sir, because they were occupying both lanes going south.

Q. But at least, according to your testimony, it was heavy enough so that for a period of about 60 seconds you had to remain at a complete stop, blocking both northbound lanes? A. That is right, sir.

Q. And when you stopped, you looked to your left and saw a bus 300 yards away, didn't you? A. I don't understand you now, sir.

Q. When you came to a stop, blocking either one or both of the northbound lanes of U. S. Highway No. 1, you looked to your left, didn't you? A. We looked to our right first, sir.

71 Q. All right. You looked to your right and you saw southbound traffic? A. Yes, sir.

Q. Then you turned your head and looked to your left?
A. That is right, sir.

Q. And at that time you saw a bus? A. Yes, sir.

Q. And that bus was 300 yards away? A. Yes, sir.

Q. And then you sat there for about a minute? A. No, sir. The time that we had been out on the highway, sir, I would say was about a minute.

Q. How long did you sit there, from the time you first saw the bus until the time the bus actually struck you? A. I don't know, sir, how long that was, because it came up on us real fast.

Q. Well, was it a half a minute? A. No, sir, I wouldn't say, sir.

Q. How long did it take the bus to negotiate the 300 yards?
A. I don't know, sir.

Q. Was there any conversation in the vehicle at this point?
A. Not at this time, sir.

Q. You said nothing to your brother Daniel?

72 A. No, sir, not at the time I saw the bus, sir.

Q. And he said nothing to you? A. No, sir.

* * *

76 AMESA SPRUILL,

called as a witness by counsel for plaintiffs and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRYANT:

* * *

78 Q. Now did you notice anything unusual just before the accident, as you call it? Did you notice anything unusual about the way you were traveling at that time? A. Yes.

Q. What was that, ma'am? A. The bus was running so fast, I spoke to -- it wasn't any of my relatives -- I just said to the people I was riding with, "My, this bus is running fast."

* * *

Q. Well, now, let me ask you this: Have you driven in automobiles before? A. Yes, I have.

Q. You don't drive, do you? A. No, I don't.

Q. You don't own a car? A. No.

* * *

79 Q. Let me ask you this, ma'am: Have you been in automobiles when they were traveling slow? A. Yes, I have.

Q. And have you been in automobiles when they travel fast? A. Yes, I have.

Q. Have you had occasion to notice the speed at which you were being driven? A. Yes, I have.

Q. Has that been very few times or has that been a lot of times? A. Well, a few and a lots of times, too.

* * *

81 Q. All right. After the bus stopped, where were you? A. I was pinned underneath the seat in front of me.

* * *

85 EDWIN D. SHINNAMON,

called as a witness by counsel for plaintiffs and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRYANT:

Q. Sir, will you tell us what your name is? A. Edwin D. Shinnamon.

Q. And I believe you are a Maryland State policeman? A. No, sir; I am a Baltimore County policeman.

Q. And were you a Baltimore County policeman back in June of 1954? A. Yes, I was.

Q. And were you assigned to one of those cruisers? A. Yes, sir.

Q. Did it become one of your duties to investigate and take data relative to an accident which occurred on the Baltimore highway near Halethorpe, or in Halethorpe? A. Yes, sir; it did.

* * *

86 THE WITNESS (at the board, having drawn thereon): This is the Baltimore-Washington boulevard. It is a black-topped macadam highway. The over-all width of the road, from shoulder to shoulder, is 52 feet. The highway has a

87 surfaced shoulder, which is five feet one inch. The travel lanes, the slow lane and fast lane, average ten foot.

The bus was proceeding north on the Baltimore-Washington boulevard, toward Baltimore. This is a private driveway which leads to the General Motors Corporation, which has a factory back here. There is a stop sign located at the entrance to the Baltimore-Washington boulevard.

There is a dwelling house located in here. This is a private driveway that goes back to some small cabins. In front of this private dwelling there is a stone wall which runs up here. This stone wall is four foot five inches to the top of it, and on the upper part here is a hedge which helps exclude the view into this driveway. From the ground to the top of the hedge is 10 foot 4 inches. About here is a tree, and the tree limbs extend out over the roadway, which also tends to block the view into this driveway.

The bus was proceeding north on the Baltimore-Washington boulevard. And 11 feet from this driveway the tire marks started to appear, traveling in the slow lane of traffic. After 115 foot --

THE COURT: Wait a minute. One mark started to appear 11 feet south of the private driveway?

THE WITNESS: North of the private driveway, sir.

THE COURT: North of it?

THE WITNESS: Yes, sir; they were traveling

88 north.

THE COURT: I am talking about the driveway to the General Motors. You didn't mention that?

THE WITNESS: Not yet, sir.

THE COURT: This other driveway, what driveway is that?

THE WITNESS: This is a private driveway. It goes in to several small cabins.

THE COURT: That is south of the General Motors driveway?

THE WITNESS: Yes, sir.

THE COURT: And the tire marks started 11 feet north of that private driveway?

THE WITNESS: Yes, sir, the bus marks, the tire marks of the bus. They continued 115 feet, which was a faint tire mark. It wasn't pronounced.

At this point --

BY MR. BRYANT:

Q. Would you say that was occasioned by the putting on of brakes? A. Yes, sir.

* * *

89 Q. Can you tell us where the point of impact was? A. Yes, sir. This driveway from here to here is 82 feet.

THE COURT: That is the General Motors driveway?

THE WITNESS: Yes, sir.

From this point here, 115 feet up here, there is 70 feet up you get a heavy tire mark where all the brakes on the bus were locked, dragging all the brakes.

BY MR. BRYANT:

Q. How much is that? Seventy feet? A. Seventy feet, sir.

Q. All right. A. Then at a point 10 inches inside the slow lane marker, in the northbound slow lane of traffic, we fixed the point of impact. It was here that the right front corner of the bus struck the

left rear of the automobile. The two vehicles then continued northerly on the Washington boulevard, coming to rest with the automobile in this position, and the bus with the front wheels over there.

Q. How far would you say it was from the point of impact to the point of rest? A. Sixty-two feet, four inches.

Q. And you measured that by skidmark too, didn't you? A. Yes, sir. The automobile left two skidmarks, and the automobile was measured, as was the bus, sitting right there.

90 Q. Were there any marks from the bus tires for that distance? A. Yes, sir. The tire marks from the bus and the car ran together.

Q. And let me ask you this: From the point of impact up to the point where you have indicated the two of them came to rest, there is a little grade there, isn't there? A. It is an upgrade there, yes, sir.

Q. About one per cent, would you say? A. I wouldn't know.

Q. But it is uphill? A. Yes, sir.

MR. BRYANT: Will Your Honor indulge me one second, please?

BY MR. BRYANT:

Q. Oh, by the way, Officer, what is the speed limit right in that area? A. The speed limit is 40 miles an hour.

Q. Well now, Officer, there are two speed limits, aren't there? The speed limit is 40 miles an hour for ordinary passenger cars, isn't it? A. No, sir. At this time of this accident the speed limit in the State of Maryland was 40 miles an hour.

Q. Everywhere? A. Everywhere -- according to the highway and the location.

91 Q. Now, sir, I show you what has been marked as Plaintiff's Exhibit 1 for identification and I ask you to look in that direction and direct your attention specifically to that sign there. What does that sign indicate, sir, as far as you are concerned? A. It is 40 miles an hour for automobiles and 35 miles an hour for trucks.

* * *

92 Q. Now how about when you leave Halethorpe, does it go back

up to 50 and 55? A. No, sir; it remains 40 for about five or six miles south.

Q. And then what does it become? A. It increases to 50.

Q. Well let's get straight. What is the general speed limit, the top speed limit in Maryland, on a through highway with no obstruction? A. On a four-lane highway it is 50.

93 Q. Well, this was a four-lane highway, wasn't it? A. Due to the residential section that was lowered.

Q. I understand that. I perfectly understand that. That is the point. Ordinarily the speed limit is 50; isn't that right? A. That is correct.

* * *

THE COURT: How soon did you get to the accident, Officer?

94 THE WITNESS: We were traveling southbound on the Baltimore-Washington boulevard, and as we topped the hill which would be the upgrade the accident occured on, we saw a McLean tractor-trailer driver who was southbound get out of the truck and run up to the accident, which probably had just happened. We stopped the operator of the coach; he had started toward the police station, and we stopped him. He hadn't had time to call help.

CROSS EXAMINATION

BY MR. MC CARTHY:

* * *

95 Q. And when you got to the top of that hill, you could look forward and see that there had been an accident. Could you see any traffic? Will you describe the traffic that was on the road? A. There was nothing in front of us southbound. The only vehicle that was in front of us southbound was the McLean tractor-trailer which had pulled off about 50 to 75 feet south of the accident, and the operator was running back. That was all of the southbound traffic that was in front of us.

Q. Were there any passenger vehicles between you and the scene of this accident? A. None that I can recall.

Q. Now you can see a considerable distance beyond the scene of this accident in that photograph, can't you? A. Yes, sir.

Q. Were there any passenger vehicles on the Washington boulevard at all proceeding in a southerly direction when you

96 got to the top of that rise? A. None that I recall, sir.

Q. Officer Shinnamon, did you check the brakes on the bus? A. Yes, sir; I did.

Q. Will you tell us when that was done and how it was done? A. Immediately after we had the accident, the cars removed from the highway, the passengers were returned to the bus and the ambulance removed the injured, I got onto the bus, which was operated by Mr. Buchanan, and rode with him to the Greyhound terminal in Baltimore.

We were approximately a mile or a mile and a half from the scene of the accident, which is a steep downgrade Mr. Buchanan was going down at the time. I told him to apply his brakes, which he did. The brakes all held. There was no swerving and no pulling of the bus, and the bus appeared to be in good mechanical condition at the time.

Q. Mr. Shinnamon, if a car would pull up to this stopsign and stop with its front end, that is, its front bumper, even with the stop-sign, would it have visibility down to the left, the direction from which this bus was coming? A. No, sir; it would not.

97 Q. And what would prevent it? A. The hedge and the wall, and the tree limbs.

Q. And the tree.

THE COURT: If the wheels of the automobile were adjacent to the east shoulder of the road, could you see down the road?

THE WITNESS: No, sir. You have to pull out onto the shoulder to see down the highway.

BY MR. MC CARTHY:

Q. Then you don't have to actually get into the slow, northbound lane, do you, Officer? A. No, sir. You can pull out onto the shoulder of the road and you can see to the south.

Q. And when you say "shoulder," you mean this five foot one

inch space off the paved portion, which is itself paved, isn't it?

A. Yes, sir; it is.

Q. But you have got to sneak your car right out onto there before you can see to your left? A. That is correct, sir.

Q. Now will you tell me what course this bus took, that is, in the road, using the lanes there, from the time you were able to discern a braking or tire mark, until the time the accident occurred? A. He traveled in the slow lane of traffic, all the way up to the, almost to the point of impact, where he was

98 swerving into the fast lane of traffic.

Q. And from what physical facts did you deduce that? A. The tire marks that were in the highway.

Q. Then the bus was headed, then, not generally north, but north by northwest, at the moment of impact? A. That is correct.

Q. Cutting across into the northbound fast lane? A. That is correct, sir.

Q. Officer, do you have the distance from the top of the hill, which is to the south, to this point of impact, to the point where the impact occurred? A. That is a half a mile.

Q. A half a mile? A. Yes, sir.

MR. BRYANT: A half a mile from where?

THE WITNESS: From the point of impact to the top of the hill, that is, coming out of the south, when you top the hill.

MR. BRYANT: The top of the hill, coming around the curve?

THE WITNESS: Where U. S. 1 goes to your right, and the other U. S. 1 goes straight. Here is a --

MR. BRYANT: Do you have it?

THE COURT: Excuse me. Is that Plaintiffs' No. 1?

99 THE WITNESS: No, sir. This is my own.

MR. BRYANT: Where is Plaintiffs' Exhibit 1?

You are talking about Defendants' Exhibit 1, Your Honor.

THE COURT: Defendants' Exhibit 1, yes.

MR. MC CARTHY: I think we ought to mark these.

MR. BRYANT: I think we ought to, too.

THE COURT: Let me see Defendants' No. 1, please.

This is the same as your No. 4?

THE WITNESS: Yes, sir.

THE COURT: All right. Now on that one, what is the distance, and from where?

THE WITNESS: From here to the top of this rise, which you can see, is one half a mile.

THE COURT: One half a mile. All right.

MR. BRYANT: From the point of impact to this bridge here is about how far?

THE WITNESS: That, I would say, is about a quarter of a mile. It is about half the distance.

MR. BRYANT: That is about half the distance?

THE WITNESS: Yes, sir. It is about a quarter of a mile from here to the bridge, and about a quarter of a mile from there to the top of the rise.

BY MR. MC CARTHY:

Q. Incidentally, Officer Shinnamon, what were the

100 weather conditions on this morning? A. The weather was clear at the time, and it was daylight.

Q. And when you arrived at the scene, were the lights on the bus on or off? A. They were off.

Q. The headlights, I am speaking of, were off? A. Yes, sir.

* * *

REDIRECT EXAMINATION

BY MR. BRYANT:

Q. Now when you say you were on your way to the Greyhound Bus terminal, and Mr. Buchanan was driving a little down grade, and you told him to put on his brakes, how fast was he going?

101 A. Approximately 40 miles an hour, sir.

Q. You were making a test, weren't you? A. Yes, sir.

Q. Didn't you see; didn't you know what he was doing? A. I worked as an automobile mechanic for the United States Post Office Department on truck maintenance for three years, out of Baltimore.

Q. I understand that. So in making the test, did you tell him to get at a certain speed or did you just let him drive along --
A. I just let him drive along, and then I just asked him to apply his brakes.

Q. And about what distance did he stop in? A. I don't recall the exact distance. But all the brakes held. There was no swerving, no pulling. It stopped as a normal vehicle.

* * *

Q. And what was the condition of the automobile? The automobile was right there, wasn't it? A. The automobile was demolished.

* * *

106 HARRY HILTNER BUCHANAN,

called as a witness by counsel for plaintiffs and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRYANT:

* * *

107 Q. And I believe you were the driver of the bus we have been talking about up to now? A. Yes, sir.

Q. Now, sir, what make bus is it, do you know? Is it a White, or what type? A. General Motors, sir.

Q. And how long is it? Do you know? A. Well, it is 39 or 40 feet, sir.

Q. How much does it weigh, do you know that, empty?
A. Ten tons, empty.

Q. Sir, how close to full were you on that morning? A. I was loaded, sir.

Q. You were loaded? A. To the best of my knowledge.

* * *

Q. Now, sir, how much speed were you traveling, to

108 the best of your recollection, at the time of impact?

A. Between 35 and 40 miles an hour -- not over 40 miles an hour.

THE COURT: What is it? I didn't hear you.

THE WITNESS: Not over 40 miles an hour, sir.

BY MR. BRYANT:

Q. Not over 40 at the time of impact; right? A. That is right.

Q. Now, sir --

THE COURT: How fast were you going before the impact?

THE WITNESS: Well, sir, from Elkridge, which is about five miles below, all the way through that area, I was around 40 miles an hour; that is, about all the way through there I was about 40 miles an hour, all through that area.

THE COURT: And you were 40 miles an hour at the impact?

THE WITNESS: No, not at the impact. I was about 35 miles an hour.

* * *

109 THE COURT: When did you apply your brakes?

THE WITNESS: South of this area right through here, is the Calvert distillery. This road is on Route 1, and then Route 1 goes down. And then all down through this area there is a down grade. And then this grade starts up. And all down through here, I was practically -- it was killing time.

BY MR. BRYANT:

Q. You were doing what? A. I had my foot on the brake, killing time.

Q. What do you mean by "killing time"? A. Well, there was no traffic on the road, and I wasn't due in Baltimore until 35 -- 6:35 -- and I was just about on schedule all the way through. So I wasn't running at top speed.

* * *

110 Q. How much speed were you doing when you saw the bumper

of the car? A. Around 35 miles an hour.

Q. About 35 miles an hour? A. Yes, sir.

Q. And you say that at the time of the impact you were doing about 40; is that right? A. No, sir; I do not, sir.

* * *

Q. Well, how little was it, Mr. Buchanan? What could it not be under? A. At the time of the impact, I would say it was between 30 and 35 miles an hour.

* * *

111 Q. And then there came a time when you mashed down hard on the brake; is that right? A. That is right.

Q. Now when you started riding the brake, did you diminish your speed? A. Yes, sir.

Q. From whatever you were doing at that time, you came down to about 35 miles an hour; is that right? A. That is right, sir.

Q. And when you mashed down hard on the brake, then did you cut your speed then to any extent more than you had already cut it when you started riding the brake? A. Yes, sir.

* * *

112 THE COURT: And then when you jammed the brakes on, in seconds the collision occurred?

THE WITNESS: That is right, sir.

* * *

THE COURT: Do you know how fast you were going after you jammed the brakes on finally?

THE WITNESS: No, I don't sir.

* * *

Q. Now, sir, getting back to that driveway -- not the one down here, but the one where the accident occurred -- when you saw the bumper, how far would you say you were away? A. About two bus lengths.

Q. When you saw the bumper you were about two bus lengths. That would be, if it is, you say, 39 or 40 feet, that would be 80 feet?

Right? A. Yes.

* * *

113 Q. Now how far were you away when the entire car came in front of you? -- approximately. A. This is the driveway about here, see.

Q. Sure. A. There is a house right here. And I was just practically at the entrance of the house, as I got here to the steps of the house.

Q. Then what happened? A. At the end of that wall, I would say, sir.

Q. Then what happened? A. When this car all of a sudden just shot out. And I went like that.

Q. You say, about how far that was? A bus length, or two bus lengths? A. I would say it would be about a bus length, or a bus and a half.

Q. About a bus length and a half, when he shot out in front of you? A. That is right, sir.

Q. Now let me ask you this: When you had your impact, was the car moving or sitting still? A. Moving, sir.

114 Q. It was moving? A. Yes, sir.

Q. Well, going from your right to your left? A. That is correct.

* * *

Q. Now, with "fast" as a reference, now would you attempt to approximate the speed? Was he going 25, or 20? A. I couldn't say, sir, the speed.

Q. Was he going as fast as you were going? A. It would be hard to say that, sir.

Q. Sir? A. It would be hard to say what speed he was going.

Q. I understand.

* * *

115 BY MR. BRYANT:

Q. Mr. Buchanan, when your bus came in contact with the car, you had your foot as far as it would go -- right? -- on the brake? A. Yes, sir.

Q. And after you came into contact with the car, you continued to press that brake until it stopped moving, didn't you? A. Yes, sir.

Q. Do you have any idea how far you traveled after you hit it? A. About a bus length, a bus length and a half.

* * *

116 CROSS EXAMINATION

BY MR. MC CARTHY:

Q. Mr. Buchanan, what time did you leave Washington that morning? A. Five o'clock, sir.

Q. Do you remember, when you say your bus was loaded, does that mean every seat was taken? A. I had about 25 passengers when we left Washington.

Q. And then what route did you follow? Out to No. 1? A. Yes, sir, through Hyattsville, Beltsville, College Park. It is a local route all the way through, sir.

Q. Did you pick up passengers along the way? A. Yes, sir.

Q. Do you recall whether or not you picked up any passengers this morning, that is, June 6, 1954? A. Yes, sir.

Q. Now, Mr. Buchanan, as you started down, there is a slight incline, isn't there, between the place where No. 1 and Alternate 1 divide and the General Motors driveway where this occurred? A. Yes, sir.

117 Q. Do you see this G.M. driveway in this drawing, with the 82 feet in there? A. Yes, sir.

Q. And as you started to come down that slight incline, you were braking your vehicle? A. Yes, sir.

Q. And is it your testimony that when you got about two bus lengths from this driveway, you saw the bumper of this car? A. That is right, sir.

Q. And then the next thing you knew, this car had moved out

in front of you? A. Yes, sir.

Q. Now from the time you first saw this car, the bumper of it at this stop sign, until the time this accident was over, what did you do in operating your coach? A. I swerved in the fast lane of traffic.

Q. And you applied your brakes when you swerved? A. Yes, sir.

Q. Will you tell His Honor and the ladies and gentlemen of the jury how you apply airbrakes? A. Sir, if you push airbrakes on too fast, you have no brakes at all. You have to ease your brakes down, which is the way I did it.

Q. Well, did you give it all the brakes you had? A. Yes, sir.

118 Q. And did you, while you were doing that, cut your vehicle to the left in order to avoid him? A. I did, sir.

Q. Did you reduce your speed from the time you first saw him, by this sudden, hard application of your brakes, until the time of the point of impact when the impact occurred? And by that I mean when the two vehicles came together. A. Yes, sir.

Q. And you had materially reduced the speed of your vehicle? A. That is right, sir.

Q. And how much time did you have to get to Baltimore that morning, from the scene of this accident? A. About, well, this happened around 6:05, and I wasn't due in until 6:35.

Q. And at what speed were you going when you first saw the front bumper of this car nose out from that stop sign? A. About 30 to 35 miles an hour.

* * *

REDIRECT EXAMINATION

BY MR. BRYANT:

Q. Well now, Mr. Buchanan, I believe you said you started riding your brake to reduce your speed after you saw the bumper. Is that right? A. No, sir.

119 Q. Sir? A. No, sir.

Q. You didn't say that? A. Not that I recall, sir.

Q. Well, when did you start riding the brake? A. When you go down that incline, when you start down that incline, I had my brakes on. I was starting to ride my brakes lightly coming down through there. Then when the car started out, that is when I applied my brakes completely, what I mean, heavy.

* * *

120 BY MR. BRYANT:

Q. Just tell us where you started to ride your brake.

THE COURT: Mark it right on that picture, where you started riding your brakes.

THE WITNESS: I had my brakes on all the way down this hill.

THE COURT: All the way down?

THE WITNESS: Yes, sir.

THE COURT: You started riding them at the top?

THE WITNESS: That is right. And I had my brakes, I was riding my brakes, down through here. And when I got to about this point right around here, see, this car slipped in and shot over into here.

BY MR. BRYANT:

Q. And then at that point you went for all you had? A. Yes, sir.

121 Q. Right? A. Yes, sir.

Q. Now where you pointed out to His Honor, where you started was that little hill there. Now if I told you that that hill was about 300 yards from where the point of impact was, that would be about correct, wouldn't it? A. That is right, sir.

* * *

122 BY MR. BRYANT:

Q. Well did you, when you locked your brakes, when you went for all you had, how far was this man in front of you? A. About two bus lengths.

Q. About two bus lengths? A. Yes, sir.

THE COURT: And did you lay down some skid marks?

THE WITNESS: Yes, sir; I did, sir.

* * *

123 RECROSS EXAMINATION

BY MR. MC CARTHY:

Q. How long have you been with Greyhound, Mr. Buchanan?

A. I will be there 20 years the 22d of next April.

Q. Let me ask you this: From the time you first became aware of a bumper coming out from that stop sign, it was only a matter of a couple of seconds, wasn't it, before this whole accident was over?

A. That is right, sir.

* * *

127 WALTER ROY OSTROM,

called as a witness by counsel for plaintiffs and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRYANT:

128 Q. Sir, will you state your name, address, and occupation?

A. Walter Roy Ostrom, 1908 35th Place, Northwest, Washington, D. C. I am a retired sergeant of the Metropolitan Police Department, Accident Investigation Unit.

Q. How long were you a member of the Police Department, and how long were you assigned to the Accident Investigation Unit?

A. I retired the 1st of October, this month, and I have been assigned to the Police Department over 28 years and over 16 years in the Accident Investigation Unit. I was away during World War II.

Q. What were your duties, sir, in that assignment in the A. I. U.? A. Well, I was a supervisory sergeant, supervising the work of the accident men out on the street, and the detectives assigned to the Accident Investigation Unit in their work in the investigation of accidents and in the investigation also of fatal accidents. I helped and assisted them in the preparation of their cases for the Coroner's Jury, the petit juries, grand juries; and also spent considerable time instructing them in the basic matters affecting stopping distances,

reaction time, of all types of vehicles, evaluation of speed and skid marks, and so forth.

Q. Where did you acquire your knowledge, sir, of these various things?

* * *

131 Q. Now, Sergeant, given a General Motors type passenger bus, weighing about ten tons, travelling on dry macadam, which lays an overall skidmark of 247 feet, the first 185 feet of that skidmark up to a point of impact with a 1953 De Sota sedan automobile, which it struck broadside, the last 62 feet of that skidmark being made up a slight grade pushing that automobile sideways, that is, not running with the wheels but sideways. On the basis of what I have told you, have you any opinion as to the speed at which that bus was travelling?

MR. MC CARTHY: I object to the question.

* * *

132 MR. MC CARTHY: He has to know the weight of the vehicle and the passengers on the loaded bus, and the reaction time of the driver, and he can't assume any facts not in evidence.

The police officer testified there weren't skid marks but faint tire marks for 117 feet, and 70 feet of skid marks.

THE COURT: I don't know what he means by that. I thought he meant skid marks.

He is right out there. Let us ask him if it laid down skid marks 185 feet, and shoved the car broadside for 62 more feet. Maybe I am in error.

MR. MC CARTHY: Well, let's put him back on. They have retained him here.

THE COURT: Let us ask him a question before we ask this witness. What was his name?

MR. MOORE: Shinnamon.

(Counsel having returned to trial tables:)

(The witness Ostrom having left the stand temporarily:)

Thereupon --

133 EDWIN D. SHINNAMON

returned to the stand and, having been previously duly sworn, was examined and testified further as follows:

THE COURT: Officer, I would like to clear up something I am not sure of. You testified yesterday about 185 feet of a mark, which ran to where the car was struck, and then 62 more feet. Do you recall that?

THE WITNESS: Yes, sir.

THE COURT: What kind of a mark was that 185 feet?

THE WITNESS: The first 115 feet of the tire mark was not a hard braking. It was as if he was attempting to slow down, as if like you have been someone or something enter and you start to slow down.

* * *

134 THE COURT: What you would characterize as a skid mark? You know what I mean by a "skid mark," don't you?

THE WITNESS: Yes, sir.

THE COURT: When the tire is locked.

THE WITNESS: Yes, sir.

THE COURT: How long was the skid mark?

THE WITNESS: That would be 70 feet.

* * *

135 BY MR. MC CARTHY:

Q. Officer Shinnamon, you established the point of impact, and from that you established a skid mark of 62 feet from the point of impact? A. That is correct.

Q. That is a brush mark, is it not, at which time there are marks from the four wheels of the 1953 De Sota? A. Yes, sir; they are intermingled with the tire marks of the bus.

Q. Where the four wheels of the bus skidded? A. Yes, sir.

Q. Now on the 70 feet, you have established the point of impact more than halfway through this 82 foot private driveway? Isn't that so? A. That is correct.

Q. So that this 70 feet must have begun at a point within 30 or so feet of the south approach to that driveway? A. That is correct,

sir.

Q. And that skid mark starts in the slow lane, straight northbound, and then veers to the left?

136 A. That is correct, sir.

Q. And would that indicate that the bus while in a heavy skid had been turned to its left? A. That is correct, sir.

* * *

Q. So that it is crystal clear, Officer, you had 70 feet of heavy skid marks -- A. That is right, yes, sir.

Q. -- and then the point of impact is established? A. Yes, sir.

Q. And then you have, would you characterize them as brush marks, of the two vehicles? A. The one is the braking marks of the bus, it appears, and the other one is the brush marks of the De Sota,

137 going up the boulevard.

* * *

* * *

159 DIRECT EXAMINATION
(RESUMED)

BY MR. BRYANT:

Q. Now Sergeant, I was asking you about your experience and we were talking about the 10-ton General Motors type bus that was loaded. Traveling on a dry macadam surface at 40 miles an hour, have you any opinion as to how much skid mark it would lay?

A. Ninety feet.

Q. At 50 miles an hour? A. At 50 miles an hour it would be 120 feet.

Q. Have you got any calculation for 60 miles an hour? A. I have.

Q. What is it? A. It would be 200 feet.

* * *

160 BY MR. BRYANT:

Q. Now, sir, if any of that mark were made upgrade, what effect would the upgrade have on the mark? A. For each per cent

upgrade, it would increase the coefficient and decrease the skidmark.

* * *

Q. Did you ever test the bus that was involved in this accident?

A. I did not.

Q. You have no knowledge at all as to whether the brakes were in working condition or not? A. As it laid down four skid marks, I know that the brakes were working.

* * *

Q. That indicates that the brakes were in darn good working order, doesn't it? A. Absolutely.

* * *

THE COURT: Let me see if I understand you. Didn't I ask you the same question counsel asked you, that

if you double the speed, you multiply the distance by four? I didn't ask you that question?

THE WITNESS: You asked me that question. And there was a question about 90 feet, as differentiated from a hundred. And I said I am figuring the 25 as an approximate 25, and it may be a few feet less.

THE COURT: Now if a bus is going 40 miles an hour, which is 58 feet per second, and the reaction time in a normal individual is three quarters of a second --

THE WITNESS: Yes, sir.

THE COURT: -- that means there will be 44 feet of reaction time.

THE WITNESS: That is correct, sir.

THE COURT: And it would take 90 feet after the reaction time to stop the bus going 40 miles an hour. Is that right?

THE WITNESS: That is correct, sir.

THE COURT: So it would travel 134 feet?

THE WITNESS: That is correct, yes, sir.

BY MR. MC CARTHY:

Q. And that 134 feet would be giving it the reaction time and then full brakes? A. That is right, sir.

246 THE COURT: This is probably one of the weakest cases I have ever heard. But I feel that it should go to the jury, because
247-280 if the jury should believe -- I don't know that they will -- but if the jury should believe that Daniel Bullock had entered the highway in a careful manner and was not negligent and was already there, and the operator of the bus saw him 300 yards or so, whatever the distance was, to the south -- I don't say that they are going to find that -- but if they believe Oscar Bullock's testimony, of course the bus driver cannot just plow right into the car.

I can't pass on the facts. I think I have got to pass it to the jury, and I will have to deny the motion.

* * *

286 * * *

GEORGE WILLIAM HAAKE,

called as a witness by counsel for defendants and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MC CARTHY:

Q. Will you state your full name, please? A. George William Haake.

Q. And how is your last name spelled? A. Haake.

Q. Spell it. A. H-a-a-k-e.

Q. And where are you employed, Mr. Haake? A. Washington Post and Times Herald.

Q. Where do you reside? A. In Baltimore.

Q. Mr. Haake, directing your attention to June 6th, 1954, were you a passenger on a Greyhound bus that was involved in an accident near Halethorpe, Maryland? A. I was.

Q. Where were you bound for? A. Baltimore.

Q. And where were you coming from? A. Washington.

287 Q. Had you been working that night? A. Yes.

Q. Mr. Haake, where were you seated in the bus? A. I was seated in the third seat from the driver, on the righthand side of the bus, on the outside seat.

Q. On the side of the bus that the door is located on? A. Yes.

Q. And by the outside seat, do you mean the seat next to the window or the seat next to the aisle? A. No -- next to the aisle.

Q. And were you awake at the time this accident occurred? A. Yes.

Q. Will you tell His Honor and the ladies and gentlemen of the jury just what you saw and what occurred there that morning?

A. As I was riding on the bus, I saw this car coming through this lane; and I kept watching it, and I was wondering what he was going to do. So then he stopped. And I thought, "well, I wonder what he is going to do. Is he going to come over this road, or what?"

So finally as the bus got closer to the road, to where the car was, I saw him starting up. I thought, "Holy smokes! He is going to come out."

288 Q. How far was the bus from this car, or from this road, when it became apparent to you that this car was going to come out? A. I figure about two or three bus lengths.

Q. And then what occurred? A. Well, I saw that the car started coming out and we were getting closer, and I knew we were going to hit -- we couldn't help from making a hit. So I braced myself on the seat so I wouldn't get hurt.

Q. Was there an application of the brakes on the bus? A. Oh yes.

Q. Now, then, when you first saw this car, was it at the stop sign? A. Yes.

Q. Was it stopped? A. It stopped. It came out through the road. I could see it coming out through the road. And when it got to the end of the road, it stopped.

Q. Do you have any idea of the speed of the bus at the time this car pulled out in front of it? A. I figure the bus was going around 35 or 40 miles an hour.

Q. And what course, if you know, did the bus take from the time this car pulled out in front of it? A. What course?

289 Q. Yes; how did it proceed? A. I don't get you.

THE COURT: Was it going in a straight line?

THE WITNESS: Yes, he was going on a straight line, until we got up to where the car come out, and he tried to pull to the left to get away from it.

* * *

THE COURT: Do you drive a car?

THE WITNESS: Yes, sir.

THE COURT: How long?

THE WITNESS: Since 1918.

* * *

292 Q. How much of the car could you see? A. I could see the whole car.

Q. You could see the whole car? A. Certainly.

Q. So you could see the driver? A. I never paid much attention to him.

293 Q. I know. I don't mean that. But you could see the driver's seat? A. I could see the whole car.

* * *

296 Q. Now how far would you say the bus was when you saw him; when you first saw the car, how far were you away from it? When you first saw it -- A. When I first saw the car?

Q. When you first saw the car, and it was moving. A. I could say, about a half a mile.

Q. About a half a mile, and it was moving at that time? A. Yes.

Q. And then it came to a stop, on the edge of the road?

297 A. It came out this road very slow.

* * *

299 REDIRECT EXAMINATION

BY MR. MC CARTHY:

Q. Mr. Haake, when this car started across the road, after it had been at a stop, when it started right across the road, did the bus driver apply his brakes? Or did you feel brakes applied? A. As he shot across the road?

Q. Well, after it became apparent that this car was coming across the road. A. That we were going to hit?

Q. I didn't hear that. A. You mean after he shot across the road and we knew we were going to hit it?

Q. Yes. A. Oh, why yes.

300 Q. And you felt the bus slow down? A. Oh yes.

Q. What did you do yourself when you saw this car shoot across -- start out across the road? A. I braced myself. I held onto the back of the seat and braced myself.

Q. Why did you brace yourself? A. So that I wouldn't get hurt.

Q. Did you feel that a collision was inevitable when you saw him move? A. I certainly did. I knew we couldn't get out of it.

* * *

309 MARGARET SCHRADER CAMPBELL,

called as a witness by counsel for defendants and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MC CARTHY:

Q. Will you state your full name, please? A. Mrs. Margaret Schrader Campbell.

Q. And where do you reside, Mrs. Campbell? A. I reside at 5530 Broad Branch Road, Northwest.

Q. Washington, D. C.? A. Washington 15, D. C.

Q. Have you any family? A. I do.

Q. What family? A. I have a husband and five children -- the oldest a daughter, and four sons.

Q. I take it, then, you are not employed. A. No.

Q. But full time you are employed as a housewife. A. I am a housewife.

310 Q. Mrs. Campbell, did you have occasion to be on a Greyhound bus on the morning of June 6, 1954, when it was involved in an accident near Halethorpe, outside of Baltimore? A. I did.

Q. Mrs. Campbell, where were you seated on the bus? A. I was seated in the second seat on the aisle, on the righthand side of the bus.

Q. Where were you bound for? A. I was on my way to Ashland, Pennsylvania.

Q. Mrs. Campbell, would you tell His Honor and the ladies and gentlemen of the jury what you saw as far as this accident is concerned? A. Well, we were riding along on highway No. 1, and it was early in the morning, but it was light and it was sunshine. And

this automobile -- I believe it was a black De Sota -- came out of a lane or a road on the righthand side of the road, and it appeared very suddenly and didn't appear to stop or anything. It just rushed out in front and made a large U-turn in front of the bus.

Q. When you first saw this car, was it in motion? A. Yes, it was.

Q. And how far was the bus from it when you first saw this other car? A. Oh, it wasn't far at all, because there are trees and shrubbery and things on the side of the road, and it was

311 hard to see. But it was upon us just suddenly, like it hadn't stopped at the intersection at all and had just come right out.

Q. Did you notice any change in the speed of the -- well, what happened to the bus? A. Well, the bus driver, upon sighting the car, immediately applied the brakes.

Q. Did the bus feel as though it swerved in any direction?

* * *

THE WITNESS: The bus went to the left. He was trying to avoid hitting the man if he could.

312 THE COURT: Then what happened?

THE WITNESS: Well then he hit him.

THE COURT: Do you have any idea, in terms of distance, approximately how far the bus was when you first saw the automobile?

* * *

THE COURT: Could you give us an idea in terms of the length of the bus? Was it one, two, three, four, or how many bus lengths would you say the car was away when you saw it?

THE WITNESS: It might possibly have been two. It was long enough to brace myself -- I was pregnant at the time -- to brace myself on the seat ahead of me. And I was not injured.

* * *

314 BEECHWOOD GREGORY,

called as a witness by counsel for defendants and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MC CARTHY:

Q. Will you state your full name, please? A. Beechwood Gregory.

Q. And where do you live, Mr. Gregory? A. Jessup, Maryland.

Q. Jessups, Maryland? A. That is right, sir.

Q. What is your occupation? A. I drive a taxicab.

Q. For whom do you drive? A. The Fleetway Cab Company, in Baltimore, Maryland.

* * *

Q. Mr. Gregory, did you have occasion to be on a bus in the early morning of June 6th, 1954, when it was involved in an accident near Halethorpe? A. I was, sir.

* * *

315 Q. I see. And where were you going that morning? A. I was on my way to work.

* * *

Q. Where were you seated in the coach, Mr. Gregory? A. I was seated on the front seat on the lefthand side of the bus, behind the driver.

Q. Next to the aisle? A. Right.

Q. I see. Now then, did you see this car on the side road before it came out? A. Yes, sir; I did.

Q. Suppose you tell His Honor and the ladies and gentlemen of the jury just what you saw immediately prior to the accident.

316 A. As we approached the Halethorpe police station on this morning in question, I was seated on the lefthand side of the bus, in the front seat behind the driver on the aisle side. And as we approached this intersection, south of the police station, I seen this car --

Q. Where is this police station in relation to where the accident occurred? A. It is on the old Washington boulevard.

Q. A little north?

* * *

THE COURT: How far is the station from where the accident occurred?

THE WITNESS: I would say it is, oh, about three blocks. Three short city blocks, I would say.

BY MR. MC CARTHY:

Q. It is very close? A. Yes, sir.

Q. Now then, what occurred just as you got to the intersection where the accident occurred? A. Just as we were approaching this intersection, I seen this car come out and stop, and from my judgment approximately a bus length from the intersection where the car had

317 stopped. It stopped, and then it pulled out real fast, as if it was going to make a left turn into the boulevard.

Q. How far was the bus from this car when the car started to pull across in front of it? A. I would say about a bus length, sir.

Q. Now then, what did the bus driver do, as far as you could tell from sitting behind him? A. The bus driver, he applied his brakes, real hard, and pulled to the left to try to avoid hitting the car. The car never stopped; it kept coming. And they collided.

* * *

Q. Mr. Gregory, how long have you been driving vehicles? A. About 20 years, sir.

* * *

318 CROSS EXAMINATION

BY MR. BRYANT:

* * *

319 A. As the driver was approaching the intersection where the accident occurred, there is a light there and he was braking coming down this grade.

Q. There is a light?

320 A. There is a light up there.

THE COURT: A traffic light?

THE WITNESS: Yes, a traffic light, south of the police station.

THE COURT. Oh, south of the police station. He wants to know, where the accident happened, there is no light there, is there?

THE WITNESS: No, no light where the accident happened.

THE COURT: Now before he reached the point of the accident, as he was coming down this grade here, see, he wants to know if he applied his brakes.

THE WITNESS: Yes, he was braking his bus.

* * *

THE COURT: He wants to know how far from the intersection did he start to ride his brake?

THE WITNESS: I would say about a quarter of a mile or more.

321 BY MR. BRYANT:

Q. About a quarter of a mile or more? A. Because he was coming down this incline.

Q. And you felt the bus slow down? A. That is right. I felt the bus slow down.

MR. BRYANT: I have no further questions.

REDIRECT EXAMINATION

BY MR. MC CARTHY:

Q. What about the speed of the bus during this time, Mr. Gregory? A. From my experience as a driver, I would say he was going 30 to 40 miles an hour.

Q. And then when the car shot out in front, did he decrease his speed by braking? A. Yes, he did, sir.

* * *

326 THE COURT: It is necessary that there be competent and real evidence in the case. Of course, formerly there existed the scintilla doctrine where if there was a scintilla of evidence, in those jurisdictions that recognized the scintilla doctrine, why the motion for a directed verdict must be denied and the case would have to be submitted to the jury.

327 The scintilla doctrine, however, wherever it has been recognized, has been subjected to a great deal of adverse criticism, and it has now been generally rejected or abandoned in most jurisdictions, including the Federal courts.

Under the law that now prevails, including the District of Columbia, the question whether a case must be submitted to a jury is tested not only by whether there is any evidence however slight tending to support each material issue, but by whether upon the whole evidence, upon all the evidence that has been submitted, the whole evidence adduced, reasonable persons might reach different conclusions.

It is proper for a court to direct a verdict in favor of a party who is clearly entitled to it, in the absence of any genuine issue of a material fact, or where the law would require that a directed verdict be granted. Furthermore, a court is justified in directing a verdict for insufficiency of evidence; but only so where the evidence is insufficient to support a verdict, or where the evidence is so weak that upon a motion for a new trial after a verdict, the court would feel constrained to set it aside.

Now this is a sad case indeed, because two deaths resulted from it. But I find no alternative but to grant your motion for directed verdict.

Will you bring the jury in?

MR. BRYANT: Now, if Your Honor please, for the

328 purposes of the record, you granted the motion as to what?

THE COURT: All.

MR. BRYANT: Even as to Carlester Bullock?

THE COURT: That is right.

MR. BRYANT: If Your Honor please, may I say this to you before that is final? There is no law, in Maryland or anywhere else, which would impute any negligence, --

THE COURT: Of course not.

MR. BRYANT: -- of that husband to this lady.

THE COURT: Of course not. That is right.

MR. BRYANT: And I say to you this, Your Honor, that if that negligence of her husband, if we say it is negligence, and the evidence of speed, which is evidence of negligence on the part of the bus --

THE COURT: But it must be an efficient cause of the accident.

MR. BRYANT: Well, now, I understand that, if Your Honor please. But both of them could be negligent. I think when you start talking about what is the cause of the accident, then I think that is a jury point, if you get any evidence at all. You get the evidence, and then determining whether or not it is the cause of the accident, if Your Honor please, I think that is the jury's function. I think that is the province of it.

THE COURT: It all depends. Ordinarily it would
329 be the jury's function.

MR. BRYANT: I say this to Your Honor.

THE COURT: Come to the bench, please.

(At the bench:)

(Following a discussion not recorded, counsel having returned to trial tables, and the jury now being in the box:)

THE COURT: Ladies and gentlemen of the jury, the defendants upon the close of all the evidence in the case have moved for a directed verdict. The law generally applying and prevailing at the present time is that the question whether a case must be submitted to a jury is tested not whether there is any evidence, however slight, tending to support each material issue, but by whether upon the whole evidence adduced reasonable persons might reach different conclusions.

In the old days they had what was known as the scintilla rule, so that if there was a scintilla of evidence to support the case of one side or the other, you couldn't submit it. That is no longer recognized. It is proper for a court to direct a verdict in favor of a party who is clearly entitled to it. The court, however, is justified in directing a verdict for insufficiency of evidence only when the evidence is

insufficient to support a verdict, No. 1, or 2, where the evidence is so weak that upon a motion for new trial after verdict the court would feel constrained to set it aside.

330 And the Court in this instance feels that if you had returned a verdict for the plaintiffs in this case, I would have to set it aside. Therefore the defendants' motion for directed verdict in their favor is granted.

* * *

In The United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED AUG 20 1958
Joseph W. Stewart
CLERK

No. 14,368

THOMAS BULLOCK, Administrator
of the estate of Pinkey Bullock,
Appellant

vs.

PENNSYLVANIA GREYHOUND LINES, INC.
a corporation, et al
Appellees

No. 14,369

THOMAS BULLOCK, Administrator
of the estate of Daniel M. Bullock,
Appellant

vs.

PENNSYLVANIA GREYHOUND LINES, INC.
a corporation, et al
Appellees

No. 14,370

CARLESTER BULLOCK
Appellant

vs.

PENNSYLVANIA GREYHOUND LINES, INC.
a corporation, et al
Appellees

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

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STATEMENT OF QUESTIONS PRESENTED

In the opinion of the Appellees the broad question, whether the trial court correctly directed a verdict for defendants in consolidated death and personal injury actions, is determined by:

(i) Whether reasonable minds could conclude that a collision between a bus and a car occurred in the manner testified to by a brother of the deceased operator, and himself a passenger in the car, in the face of the totally contradicting physical evidence, the testimony of three disinterested bus passengers, and the testimony of the defendant bus operator?

(ii) Whether the case should have been sent to the jury with instructions that a verdict could be returned for Plaintiffs if they believed that the accident happened according to the version the three bus passengers and the bus operator as corroborated by the physical evidence?

(iii) Whether assuming arguendo that reasonable minds could conclude that the accident could have happened as testified to by the brother of the deceased operator and himself a passenger in the car, there is any basis in Maryland law which would have warranted sending all or any of the consolidated actions to the jury?

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COUNTER-STATEMENT OF THE CASE

These were actions for wrongful death brought by the representative of the deceased operator of an automobile and a passenger therein and for personal injuries brought by another passenger in the car against the owner and operator of a bus. They arose out of a collision between the car and the bus on June 6, 1954, at between 6:00 and 6:30 A.M., on the Washington-Baltimore Boulevard near Halethorpe, Maryland. Daniel M. Bullock, the operator of the car, and Pinkey Bullock, his mother, and a passenger in the car, were killed. Their administrator brought these actions, which were consolidated for trial along with an action for personal injuries brought by Carlester Bullock, another car passenger. At the close of all the evidence the Trial Court directed a verdict for Defendants, the Pennsylvania Greyhound Lines, Inc., and Harry H. Buchanan, the bus operator. Plaintiffs' motion to set aside the verdict was denied and final judgment was entered thereon.

Plaintiffs' chief witness was Oscar Bullock, a brother of the deceased operator of the car and himself a passenger in the car. He testified that the four Bullocks were traveling from Washington to Brooklyn on the Baltimore Boulevard and while proceeding in a northerly direction missed a turn which would lead to Route 40 and a bypass of Baltimore. In search of a place to turn around they made a right hand turn into a private driveway, turned around, and then stopped at a stop sign on the right side of the driveway coming out. After making a check to the left for traffic and observing none for a distance of 600 yards at which point a curve obscured vision, a check was made to the right for southbound traffic. Then the car went out on the northbound portion of the highway and stopped. The witness stated that while in this stopped position he spotted the bus for the first time when it was over 300 yards away, coming at a rapid rate of speed, no less than 60 miles per hour. Then he saw that the bus was going to hit the car and it did. (J. A. 18-21).

On cross-examination, the witness testified that he and his brother, the operator of the car were unfamiliar with the road. He explained that it was necessary to come out some distance from the stop sign in order to see what was coming from the south because a house, stone wall and shrubbery prevented observation in that direction. He repeated, however, that he had looked in that direction and that the road was clear and it wasn't until the car was stopped on the highway blocking one or both of the northbound lanes that the bus was sighted for the first time. He stated that there was quite a bit of traffic in the southbound lanes, all private cars, and that they had to wait about a minute on the highway awaiting an opportunity to turn into the southbound lanes, up until the moment of impact. The witness said it looked like the bus came faster and faster. When confronted with an answer he had given some weeks before trial, when his deposition was taken, that he couldn't judge the speed of a car coming toward him but only when he saw it moving sideways, he stated that he thought an accurate statement of the speed was being demanded so he didn't give any. Finally, in answer to a question by the court he stated that the bus could have been going 30 miles per hour (J.A. 21-28).

Amesa Spruill, called by the Plaintiffs, testified that she was a bus passenger in the rear of the bus, and that she said to the people she was riding with just before the accident happened, "My this bus is running fast." When asked whether she had had occasion to notice the speed at which she was being driven very few times or a lot of times, answered, "Well, a few and a lots of times, too." (J.A. 32).

A Baltimore County Policeman, Edwin D. Shinnamon, testified on behalf of Plaintiffs, and stated that there were 115 feet of faint tire marks, then 70 feet of heavy tire marks where all the brakes on the bus had locked, to the point of impact, then 62 feet, 4 inches, of skidmark beyond the point of impact. He described the highway as having an overall width from shoulder to shoulder of 52 feet (J.A. 34). The four travel lanes average 10 feet in width, and on each side is a surfaced shoulder of 5 feet, 1 inch (J.A. 33). Officer Shinnamon testified that the view from the private driveway from which the car drove

onto the highway was obscured by a fence, overhanging trees, and a hedge 10 feet, 4 inches high. (J.A. 33). He described the tire and skid marks as beginning in the slow lane, or lane next to the shoulder, and as swerving sharply to the left, into the fast lane, or lane next to the center of the highway, to the point of impact, which was about 10 inches inside the slow lane, where the right front of the bus struck the left rear of the car. He testified that the bus was cutting across into the fast lane, and was traveling north by northwest when the collision occurred. Soon after the accident a test of the bus' brakes held under his supervision revealed that the brakes were in good mechanical condition with no swerving or pulling when the brakes were applied (J.A. 33-40).

Appellants' Statement of the Case fails to tell of the nature of these skid marks except to say that the plaintiffs' proof was that there were 185 feet of tire marks caused by the application of the bus' brakes to the point of impact. That statement also says nothing about the testimony of the bus operator, except to say that he admitted that the bus was going between 35 and 40 miles an hour at the time of impact, and this despite applying the brakes for a distance of 185 feet prior to the impact. However, it is clear that the driver admitted no such thing. He stated that when he first saw the bumper of the car for the first time as it appeared out of the blind private road he was doing 35 miles an hour, having reduced his speed from 40 because he was braking down the hill approaching the intersection (J.A. 41,42). He testified when called by the Plaintiffs, that he applied his brakes "Heavy" when the car started out from the driveway. At that time he was doing 35 miles per hour. The heavy application of the brakes reduced the speed of the bus to some extent, and the collision occurred seconds later. The bus operator testified that he did not know the speed at the actual time of impact, that is, how much the speed of the bus had been reduced from 35, by the heavy application of the brakes (J.A. 42). It was all made clear at a later point when he stated that he was doing 35 miles an hour when he first saw the car and that thereafter slammed on his brakes (J.A. 45). There is one answer made by the bus operator in which he appears to say what the Appellants say he said (J.A. 42). But, Plaintiffs' counsel's own further questions which immediately follow

elicit the picture which has just been set forth. Appellants might just as well have argued that the driver admitted he was drunk from the following:

"Q. Sir, how close to full were you on that morning?

"A. I was loaded, sir." (J.A. 40)

Now, in addition to not admitting that he was going 35 at the time of the impact, Mr. Buchanan, the bus operator, testified that he first saw the car's bumper appear out of the blind driveway when he was about two bus lengths from the driveway, or about 80 feet (J.A. 42). The car all of a sudden just shot out when he was about a bus length and a half a bus length away. He further stated that he swerved into the fast lane, cutting to the left in order to avoid hitting the car (J.A. 45).

George William Haake, a bus passenger, testified that when the bus was about two or three bus lengths from the private road the car started out, after having stopped at the stop sign, and that the driver applied the brakes and swerved to the left (J.A. 54). With regard to this witness, and in an effort to show a self-contradiction, Appellants assert in their Statement of the Case (Appellants' Brief, page 4), that Haake first testified that the automobile shot out in front of the bus, and then said it came out slowly. Since nothing in the Joint Appendix bears this out at all, and Appellants cite nothing contained therein, apparently reliance is had on the trial transcript. The following is from the trial transcript, pgs. 297 and 298:

"Q. Now when he did come in front of you, about how fast did he go across you.

"A. Well, he shot right across the road. I wouldn't know how fast he was going.

"Q. Would you give us an estimate? Would you say he was going five miles and hour, or about 25?

"A. Well, if he had of been going 25, we would probably have missed him.

"Q. All right. Well, what would you say he was doing?

"A. To my estimation he must have pulled out very slowly.

"Q. Well, he didn't shoot out in front of you?

"A. I don't know about 25 miles.

"Q. He dragged out; he didn't shoot out in front of you, did he?

"A. He wasn't dragging either. It was just like any ordinary person would pull across the road."

In other words, Plaintiffs' counsel was troubled by the implication that the driver of the car shot out of the driveway without stopping at the stop sign. But, Haake had already testified that he had seen the driver stop. His testimony was that it then pulled out in front of the bus. He stated that the car suddenly pulled out from the driveway into the path of the bus when the bus was very close, and expressed this by saying that the car had "shot out." He did not mean that the car was going very fast, or even 25 miles an hour. He couldn't have unless he thought that the car was specially endowed so that it could reach that speed from a stopped position in a matter of a few feet.

Margaret Schrader Campbell testified that she was seated in the second seat on the aisle on the right-hand side of the bus, and that a car came out of a lane on the right-hand side of the road, and it appeared suddenly. She stated that is just rushed out in front of the bus, "like it hadn't stopped at the intersection at all and had just come right out" and that the driver immediately applied the brakes and the bus swerved to the left. She placed the distance from the driveway when the car appeared at perhaps two bus lengths, long enough for her to brace herself on the seat ahead and avoid being injured although she was pregnant at the time. Appellants represent in their Statement of the Case, that this witness testified that the car was never in a stopped position, apparently to show that these bus passenger witnesses gave conflicting versions of the accident. Her actual testimony was the first time she saw the car it was in motion, which, of course, is an entirely different thing, and her testimony is not in conflict with that of the two other bus passengers and the bus operator (J.A. 56, 57).

Beechwood Gregory testified that he was seated on the front seat on the left-hand side of the bus on the aisle, behind the driver, a peculiarly good point of vantage. He said that when the bus was one bus length away from the car, which had stopped at the intersection of the boulevard and the highway, the car pulled out very suddently in front of the bus and that the driver slammed on his brakes and swerved the bus to the left. (J. A. 58, 59). He stated that the brakes were being applied all the way down the hill approaching the intersection and that the bus was going 30 to 40 miles an hour when the car came out in front of it and that thereafter the driver slammed on the brakes (J.A. 60).

At the close of all the evidence, in response to the defendants' motion for a directed verdict, the Court observed that the scintilla rule is not the law in the District of Columbia on the question of directed verdict. The learned Trial Judge did not rule that plaintiffs had failed to introduce a scintilla of evidence. He explained that the correct rule is whether upon the whole evidence reasonable persons might reach different conclusions (J.A. 60, 61). The Court made it quite plain that his ruling was based on the rule which allows the trial court to direct a verdict where the evidence is so weak that upon a motion for a new trial after verdict the court would feel constrained to set it aside (J.A. 63).

SUMMARY OF ARGUMENT

In consolidated death and personal injury actions a trial court is required to direct a verdict for defendant if reasonable minds could not conclude from all the evidence adduced at the trial that defendant did or failed to do something which could support a finding of negligence. Appellants stand or fall on the testimony of a passenger in the car as credible evidence of how a collision between a car and a bus happened, and argue that on that version of the accident a jury could find that the bus operator alone was negligent, or, if both operators were negligent, that the bus operator had the last clear chance. For that reason, Appellants argue that the Trial Court

incorrectly directed a verdict for Appellees at the close of all the evidence. But, that witness's version of the collision was so palpably preposterous and inherently improbable, even standing alone, that reasonable minds could not accept it as an accurate account of the collision. And when that story is viewed against the totally contradicting testimony of three disinterested bus passengers, and the bus operator, and the tire and skid mark evidence, and other evidence, it loses all semblance of probative worth.

There is no rule of law which compels a trial or appellate court to assume an attitude of such absurd credulity that this version of the accident must be believed for any purpose. If reasonable minds could not find that story worthy of belief in the light of all the evidence, the Trial Court acted in the only sensible way by directing a verdict against all Appellants, and this Court should affirm.

The only tolorable conclusion from all the evidence is that the collision giving rise to these actions occurred when the car pulled out in front of the bus from a blind, private intersecting road, under circumstances making a collision inevitable despite the non-negligent efforts of the bus operator to avoid that collision. Appellants are not saved by the meager evidence of excessive speed of the bus, even if reasonable minds could conclude from all the evidence that the bus was moving sixty miles an hour or more when the car usurped the right of way. Maryland law is emphatic that the sole proximate cause of an intersection collision is the unfavored driver's violation of the right of way statute, despite greatly excessive speed on the part of the favored driver. Since the sole proximate cause of the collision was the unfavored driver's negligence, passengers in the unfavored car have no action against the speeding favored driver.

Finally, even if the version of this collision given by Appellant's chief witness is held to be worthy of belief by a reasonable mind when examined in the light of all the evidence, Maryland law precludes recovery. For on that set of facts, the car operator was negligent in blocking passage on the favored road and a jury may not find otherwise. Further, that

negligence is the sole proximate cause of the accident. Maryland law also precludes the application of the last clear chance doctrine on those facts, since the crucial factor is the right of the favored driver to assume right up to the moment of impact that the unfavored driver will yield the right of way by stopping or by vacating the right of way so as to allow passage of the favored driver. Hence, the Trial Court correctly directed a verdict whether the Appellants' chief witness's version of the accident is worthy of belief or not.

ARGUMENT

I.

On appeal from a directed verdict for Appellees, in consolidated death and personal injury actions arising out of a bus-car collision, Appellants must show that there was evidence adduced at trial from which a reasonable mind could rationally conclude that the accident occurred in such a manner that the Appellees could have been found by the jury to have been negligent, or that the Appellees had the last clear chance. A jury verdict cannot be based upon speculation so that a jury cannot be permitted to find negligence unless the evidence could lead a reasonable mind to conclude that the defendant did certain specific things or failed to do something, which acts or omissions could be found to exhibit a lack of due care under the circumstances.

In this Court, Appellants stand or fall on a version of the accident elicited by the testimony of Oscar Bullock, a passenger in the car which collided with the bus operated by the Defendant Buchanan and owned by the Defendant Greyhound. Appellants argue that on this version of the accident, which must be believed for purposes of this appeal, the Appellee bus operator could have been found negligent or it could have been found that he had the last clear chance. Appellees argue in Part II that even if this version of the collision is believed the Trial Court correctly directed a

verdict for Appellees since under Maryland law this proof does not show negligence on the bus operator's part, nor would last clear chance apply. But, the Trial Court's action in directing a verdict for Appellees was correct for reasons which eliminate any need for inquiry into that phase of the question.

The fundamental error in Appellants' position is that Oscar Bullock's version of the accident must be believed for purposes of this appeal. This position, in effect, is that a motion for directed verdict can do no more than test the legal or substantive sufficiency of the party's evidence against whom the motion is directed. That is not and should not be the law in the District of Columbia. There is no rule of law which saddles the Trial Court or this Court with the duty to be naively gullible regardless of the character or quality of the evidence in question. The Trial Court ruled that on all the evidence reasonable men could not find for Appellants. This was not error. The Trial Judge followed the correct criterion which should govern a trial court as to when a verdict can be directed, and his judgment, that reasonable minds could not conclude that Appellees were negligent or had the last clear chance, was plainly sound and should be affirmed. This is because Oscar Bullock's version of the accident was preposterous and inherently improbable standing alone, and when viewed against the completely contradictory testimony of three disinterested bus passengers and the bus operator, along with the evidence of tire and skid marks which corroborate the bus passengers and operator, Bullock's version of the accident is not worthy of belief by a reasonable mind bent upon a rational conclusion. When stripped of this incredible testimony the evidence, taken in its best light for Appellants, is that the bus was speeding. Under Maryland law applicable to an accident under the circumstances here presented, the speed of the bus would not be sufficient proof of negligence and the negligence of the car operator is clear as a matter of law. And as to the version of the accident given by the bus passengers and the operator it is evident, as Appellants concede by their silence, that under it

Appellants could not be permitted to go to the jury.

A. THE TRIAL COURT FOLLOWED THE CORRECT TEST TO DETERMINE WHEN A VERDICT MAY BE DIRECTED

The Trial Court, at the close of all the evidence, in ruling upon Appellees' motion for directed verdict observed:

> ". . . the question whether a case must be submitted to a jury is tested not only by whether there is any evidence however slight tending to support each material issue, but by whether upon the whole evidence . . . adduced, reasonable persons might reach different conclusions.
>
> ". . . or where the evidence is so weak that upon a motion for a new trial after a verdict, the court would feel constrained to set it aside." (J.A. 61).

In addressing the jury the Trial Court said: (J.A. 63)

> "And the Court in this instance feels that if you had returned a verdict for the plaintiffs in this case, I would have to set it aside. Therefore, the defendants' motion for directed verdict in their favor is granted."

That the Trial Court followed the correct rule is demonstrated by the most recent expression of this Court on the matter of direction of verdicts, Murray v. Towers, 99 U.S. App. D.C. 293, 239 F. 2d 914 (1956). This was not a tort but a contract case. However, on this question the Court stated:

> "A mere scintilla is not enough. The trial judge decided that after granting to the appellant every favorable intendment to which he was entitled, on the merits, he would have been bound to set aside a plaintiff's verdict. 'It repeatedly has been held by this court that before evidence can be left to the jury, 'there is a preliminary question for the judge not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.' . . . The rule is settled for the federal courts . . . that whenever in the trial of a civil case the evidence is clearly such that if a verdict were rendered for one of the parties, the

> other would be entitled to a new trial, it is the duty of the judge to direct a jury to find according to the views of the court.' Pennsylvania R. Co. v. Chamberlain, 288 U. S. 333 (1933)."

This plainly negates any possibility of argument that the plaintiffs' evidence must be believed. If despite a jury verdict for plaintiff the court can set aside a verdict for plaintiff and direct a verdict for defendant, it must be clear that the trial court is under no compulsion to believe plaintiff's evidence.

The most frequently quoted case in this area is Shewmaker v. Capital Transit Co., 79 U.S. App. D.C. 102, 143 F. 2d 142 (1944), and Appellees concede that this case enunciates the correct rule. But the full statement of the rule from that case shows that does not mean that Oscar Bullock's testimony must be believed. The case involved a two car collision and the trial judge granted defendant's motion for judgment n.o.v. In the course of reversing this Court stated:

> ". . . if upon the evidence, so considered, reasonable men might differ, the case should go to the jury; if on the other hand, no reasonable man could reach a verdict in favor of the plaintiff; a mere scintilla of evidence is not sufficient; the question is not whether there is any evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party upon whom the onus of proof is imposed; the burden being upon the plaintiff to establish the negligence and the injury alleged . . . ."

There was no discussion of the facts of the case by the Court in the Shewmaker case. There is only the general holding that the test governing decision on motion for judgment n.o.v. was satisfied, namely, ". . . whether a jury of reasonable men could properly reach a verdict in favor of the party upon whom the onus of proof is imposed."

It is patent that the Trial Court here applied this same rule when ruling on Appellees' motion for directed verdict.[1/] The Appellants

1/ In Shewmaker v. Capital Transit, supra, the Court pointed out that the same rule obtains on motion for directed verdict.

may contend that he erred in applying it but the Shewmaker case, of course, is no authority for that contention since the facts of the particular case must govern the rule's application.

The real significance of Shewmaker is that it refutes Appellants' contention that this Court must believe Oscar Bullock's testimony even though convinced that reasonable minds could not believe it. We do not have only the question whether, assuming the truth of that version of the accident, Appellees could have been found by the jury to have been negligent. There is the preliminary question whether reasonable jurors could accept that version of the accident as accurate.

Appellants rely heavily on Simmonds v. Capital Transit Co., 79 U. S. App. D. C. 371, 147 F. 2d 570 (1945). Nothing in that case warrants the conclusion that on motion for directed verdict plaintiff's evidence must be believed. That case again emphasizes that only when reasonable men cannot differ in their conclusions to be drawn from the evidence a judgment n.o.b. for defendant should be granted.

In the Simmonds case there was evidence which could be believed by reasonable minds that the street car, which struck plaintiff at an uncontrolled intersection, and when plaintiff was walking within a crosswalk usurped the right of way to which plaintiff as a pedestrian was entitled under all the circumstances. There was no holding that the Court is compelled to accept as true all of plaintiff's evidence no matter how incredible, and, of course, the conclusion in that case, that reasonable men could accept plaintiff's evidence, is not binding on the facts of this case.

Albaugh v. Pennsylvania R. Co., 120 F. Supp. 70 (D.C. D.C. 1954), affirmed 95 U.S. App. D. C. 82, 219 F. 2d 764 (1955), or Washington, Marlboro & Annapolis Motor Lines v. Maske, 89 U. S. App. D. C. 36, 190 F. 2d 621 (1951), could not have been decided as they were if the court is compelled to believe all plaintiff's evidence for purposes of deciding whether to grant a motion for directed verdict.

In the Albaugh case there was a collision between a truck and a train at a grade crossing. The defendant's motion for directed verdict was granted at the close of all the evidence on the ground that although the question of defendant's negligence was for the jury, the plaintiff was negligent as a matter of law. In reaching that result the Court held it would not believe plaintiff's testimony that he looked but didn't see the approaching train because the testimony was incredible. If the plaintiff's evidence is incredible in the light of all the evidence it does not have to be believed upon motion for directed verdict.

In Washington, Marlboro & Annapolis v. Maske, supra, disinterested witnesses testified that the bus was going at a moderate speed and a cab "cut in from the right in front of the bus" and the bus had to stop suddenly. Plaintiff who was injured when the bus stopped suddenly had a verdict in the trial court. On appeal this was reversed on the ground that there was insufficient evidence to go to the jury. Appellee's testimony that the bus was speeding and that she saw no reason to stop could not be believed in the light of a prior statement to her doctor that the bus and an auto almost had a collision and in the light of the disinterested testimony of the three witnesses for defendant.

Now, neither of these cases is parallel on its facts to ours. No two cases will be. But, in both there were particular factors making the evidence incredible, despite the fact that standing alone the testimony in each case was eminently credible. Oscar Bullock's story standing alone strains the credulity of even the most kindly disposed ear.

Appellees contend that Oscar Bullock's testimony does not have to be believed for purposes of this appeal because of the existence of some mechanical rule which makes that demand.

None of the cases cited by Appellants, nor any other case, are authority for a rule which requires this Court to believe all of Appellants' evidence for purposes of this appeal. And, of course, no other case controls on the question whether reasonable minds could differ in their conclusions on

the evidence in this case.

Schutz v. Pennsylvania Railroad, 350 U.S. 523, was a Jones Act case, and the Court held merely that the jury, in the absence of direct evidence, could have found from the circumstantial evidence that the cause of death was the unsafe character of the place of work. The trial court had directed a verdict on the ground that the deceased could have met his death in a manner which was not related to the absence of light and the presence of ice on the tugs where he was working.

In Williams v. Capital Transit, 94 U.S. App. D.C. 221; 215 F.2d 487 (1954), there was a directed verdict for defendant after the jury had disagreed, which was reversed on appeal. The holding was that although there was evidence that a car had run a red light causing a collision with the streetcar on which plaintiff was a passenger, it remained for the jury to say whether the streetcar operator was also negligent in connection with the collision. Plaintiff also had the benefit of res ipsa loquitor and the case in no way aids Appellants.

Peigh v. Baltimore & O. R. Co., 92 U. S. App. D. C. 198; 204 F. 2d 391 (1953), held only that a directed verdict for defendant was improper since it should have been left to the jury to decide whether the defendant had failed to give reasonable warning to approaching motorists of the presence of a box car standing on a track in the middle of the street.

Capital Transit Co. v. Bingman, 94 U. S. App. D. C. 75, 212 F. 2d 241 (1954), not cited by Appellants, contains language which would support the contention that Appellants' evidence must be believed for purposes of reviewing a directed verdict. The case states:

> "Only where the probative facts are undisputed and where reasonable minds can draw but one inference from them does the question become one for the court . . . . Where the case turns on controverted facts and credibility of witnesses the case is for the jury."

But an examination of the facts shows that there was credible testimony from plaintiff which would support the verdict. The statement of the Court, insofar as it appears to mean that a trial judge can never make

the determination that plaintiff's evidence cannot be believed by reasonable minds, is out of step with all other cases decided by this Court. While cogent argument can be made for such a rule, it is not the law in the District of Columbia.

Appellees are not unmindful of the Court's admonition in the Shewmaker and Peigh cases, that the wiser course for the trial court is to send the case to the jury. This is backed by the very practical reason that if there is a reversal, a new trial is not needed. But, Appellees urge that there is no merit in wasting the jury's time when it is better utilized elsewhere, if plaintiff's evidence is clearly not sufficient. There is the danger that if this admonition is enforced by reversals which otherwise would not be forthcoming, in order to impress its serious intent upon the trial courts, the resultant reaction there might add a heavy burden on the already critically crowded trial dockets. Appellees would be in the forefront to oppose the unchecked summary disposition of cases by trial judges, and merely urge that the answer is judicious regulation, not a rigid prohibition against directed verdicts.

B. THE TRIAL COURT'S APPLICATION OF THE RULE GOVERNING THE DIRECTION OF A VERDICT WAS SOUND SINCE REASONABLE MINDS COULD NOT BELIEVE OSCAR BULLOCK'S TESTIMONY AND THE JURY SHOULD NOT HAVE BEEN PERMITTED TO DO SO. APPELLANTS' CASE COLLAPSES WITHOUT THAT TESTIMONY

Oscar Bullock's version of this accident, in its stark entirety is as follows: (J.A. 17-31)

Proceeding north on the Washington-Baltimore Boulevard, the car in which he and the driver, Daniel Bullock, his brother, Pinkey Bullock, their mother, and Carlester Bullock, Daniel's wife, were riding, missed a turn. The driver and passengers were unfamiliar with the highway but finally discovered a private driveway into which they made a ninety degree angle right turn. The car was turned around and started back out of the driveway

so that a left turn could be made onto the southbound lanes of the boulevard. The car stopped at a stop sign on the private driveway before going out on the highway. No traffic at all was observed coming from the south for 600 yards where a curve obstructed further vision. The witness could see this although vision in that direction from the private driveway is made difficult by a house, trees with overhanging limbs and a ten foot high hedge. The car then ventured out across the northbound lanes, stopping somewhere short of the double line marking the center of the four-lane highway. The car was stopped there while the driver awaited an opportunity to join the moderately heavy flow of southbound traffic. This was at between 6:00 and 6:30 A.M. on a Sunday morning, but the traffic was heavy enough to occupy both the southbound lanes, and heavy enough that the car was in this stopped position for about one minute. Only when the car was in that stopped position astraddle presumably all of the fast northbound lane, or lane nearest the center, and part of the slow lane next to the shoulder, did the witness first see the bus. It was then 300 yards away and was traveling at least 60 miles an hour. The bus continued to approach, seemingly faster and faster, and ran into the car.

Appellants stand or fall on this testimony, and urge that on that version of the collision a jury could find that the bus operator alone was negligent, or that if both operators were negligent, the doctrine of last clear chance is applicable. They also assert that at least the passengers in the car had an action against Appellees.

If Oscar Bullock's testimony was the only evidence of the manner in which this accident occurred, Appellees contend it could not support a verdict for Appellants. This version of the accident, supplied by a passenger in the car involved in what admittedly was a serious collision, is so contrary to ordinary human experience and to the physical evidence that it is inherently improbable and utterly preposterous.

The incontrovertible physical evidence was that the Baltimore Boulevard consists of four lanes, two northbound and two southbound, averaging ten feet in width. There is a paved shoulder, 5 feet wide on each side.

The 115 feet of tire marks are completely in the slow lane, or lane next to the shoulder on the northbound side. The 70 feet of heavy skid marks are almost entirely in the same lane, but several abruptly into the fast lane, or lane next to the center line. The point of impact was 10 inches inside the slow lane where the right front of the bus struck the left rear side of the car. The bus was moving northwest by north at impact and the skid marks continue in that direction across the fast lane for 62 feet (J.A. 33-40).

Appellants contend that this physical evidence somehow corroborates Oscar Bullock's testimony. This is nowhere demonstrated for the simple reason that the opposite is true. This evidence exposes Oscar Bullock's testimony as incredible. The witness stated that the bus seemed to approach faster and faster when the tire and skid marks show an extended effort to slow down approaching the intersection, then a heavy application of brakes. And probably the most damaging fact to Oscar Bullock's account is that the bus swerved abruptly to the left just before impact. Why in the name of common sense would a bus driver who has a car stopped astraddle the highway plainly before him for a distance of 300 yards, begin braking gradually 185 feet from where that car is stopped, then when within 70 feet slam on his brakes and then when within a very short distance swerve abruptly to the left into this car which hasn't moved? And why this extraordinary conduct when at least some of the lane in which he was traveling was not blocked, when there was a five foot paved shoulder connected thereto plus some undetermined width of unsurfaced shoulder, all of which was available for negotiation past the car?

Appellees contend that directed verdict at the close of Appellants' evidence would have been proper upon this recital. Perhaps though in the absence of anything else, in order to give the widest application to the right of jury trial, Appellants would have been entitled to have the jury sit in judgment on this story and perhaps a jury could infer inattention and panic on the bus operator's part. Perhaps the jury could have been allowed to draw the inferences in Appellants' favor, the bus operator, who, called by

Appellants, testified that the car pulled suddenly out from this blind intersecting private driveway.

Whatever should have been done at the close of Appellants' case, after the Court heard the three disinterested bus passengers, his duty was plain. In substance they all testified that the car suddenly drove out in front of the bus, that the bus driver slammed on the brakes, swerved to the left, but to no avail. This is consistent with the bus driver's testimony. It rules out inattention or panic on the part of the bus operator, a driver with twenty-two years experience. It is consistent with the tire and skid evidence which is rationally explainable only in that way. It is consistent with Officer Shinnamon's testimony that when he appeared on the scene just after the accident, the only southbound traffic in sight was a parked tractor-trailer. It is consistent with the evidence showing that vision from the driveway was obscured by a stone wall, hedge and overhanging limbs. In sum, all the evidence deprived Oscar Bullock's testimony of any probative worth.

In that posture of things the Trial Court was compelled to direct a verdict for Appellees. The only conceivable saving argument for Appellees is that on the only reasonable conclusion which could be drawn by reasonable minds, that this accident occurred in the manner described by the three disinterested bus passengers, Appellants could recover. This is without doubt lacking in merit, since, as Appellees will show below, even drawing every favorable inference as to distances and excessive speed of the bus, Maryland law would bar recovery. The Maryland statutes and decisions in no uncertain terms provide that the sole proximate cause of such a collision was the car driver's negligence in usurping the bus' right of way. This defeats not only the action by the representative of the deceased driver, but also the action on behalf of the deceased passenger and the other passenger's action, since the driver cannot be found to have committed any negligent act which was a contributing proximate cause. This is clear from even a cursory examination of the applicable Maryland law, which, of course, is controlling here. Capital Transit Co. v. Hedin, 95 U.S. App. D.C. 351, 222 F 2d. 41 (1955).

An exhaustive treatment here of the numerous Maryland cases construing and applying Article 66½ §§176H, 192A., 202 (a) and 207 (c) Maryland Code (1951) will not be attempted. Only a sampling will be discussed.

The most recent is David v. Taylor, _____ Md. _____, 141 A. 2d 706 (May 1958). Taylor was driving west on an unfavored street, Maryland semantics for a street on which traffic is controlled by a stop sign, and Davis was driving north on a through or favored highway. Taylor testified he stopped and looked both ways, and then proceeded into the intersection. He stated he did not see the Davis car until he was about "middle ways, or right in the center" of the intersection, when he saw it 30 or 40 feet to his left coming "like a bullet." The Davis car left 90 feet of skidmarks and the impact was in the center of the intersection.

On appeal from a jury verdict for plaintiff after motions for directed verdict and judgment n.o.v. by defendant were denied the Court ordered judgment for defendant. The Court's summary treatment of the case points up the settled status of Maryland law on the point. Appellee argued that the unfavored driver is not bound to anticipate excessive speed of the favored car. The Court stated:

> ". . . it is sufficient to say that we adhere to the boulevard rule so clearly laid down in the Maryland cases. It was the duty of the unfavored driver to yield the right of way, and he cannot relieve himself of that duty by a claim that the favored driver was exceeding the speed limit. To cite only a few of the cases so holding, see Belle Isle Cab Co. v. Pruitt, 187 Md 174, 179, 49 A. 2d 537; Sun Cab Co., Inc. v. Cusick, 209 Md. 354, 121 A 2d 188; Fowler v. DeFontes, 211 Md. 568, 128 A 2d 395. The appellee concedes that the doctrine of last clear chance is inapplicable."

Another Maryland case of late vintage amply displays the Maryland court's attitude toward arguments based on the speed of a vehicle. This is important since Appellants rely heavily on evidence tending to show excessive speed on the bus operator's part. In Mason v. Triplett, _____ Md. _____, 141 A. 2d 708 (May 1958), not an intersection collision case,

the Court said:

> "As we have pointed out in many cases, speed alone may not be considered as a contributing cause where the proximate cause is the unforeseeably negligent driver of the other car in violation of the traffic laws."

Other Maryland cases in addition to those cited in Davis v. Taylor, supra, make it plain that the excessive speed of the bus, assuming the proof was sufficient on that point, is of no moment, and that the sole proximate cause of this collision was the unfavored driver's violation of the traffic laws. State, to Use of Frizzell v. Gosnell, 197 Md 381, 79 A. 2d 530 (1951); Madge v. Fabrizio, 179 Md. 517, 20 A. 2d 172 (1941).

The full impact of the Maryland cases was correctly discerned by this Court in Capital Transit Co. v. Hedin, 95 U.S. App. D. C. 351, 222 F. 2d 41 (1955). This was an intersection collision case. The evidence introduced by plaintiff was that plaintiff stopped at a stop sign while driving east on an unfavored street. He waited for a break in the southbound traffic, then looked to right for northbound traffic. He saw nothing within 60 feet of unobstructed view. He crossed the southbound lane and a five foot grass plot and was struck in the northbound lane by the bus. Defendant offered no evidence, and his motion for directed verdict and judgment n.o.v. were denied. On appeal the Court held that a verdict should have been directed for defendant (pg. 353):

> "The standard of conduct prescribed by the law of Maryland applies since the accident happened there /Citations ommitted/. Any act or omission which Maryland has, by statute or judicial decision, declared to be negligent must be so regarded by us.
>
> "Article 66½, §198, Maryland Code (1951), requires a driver on an unfavored road to come to a full stop at the entrance to a through highway, and to yield the right of way to vehicles approaching thereon. The Maryland Court of Appeals has said this statutory obligation is not discharged by a mere stop at the entrance to the intersection. The obligation extends to the entire passage across the favored highway. Moreover a favored driver

> on a through highway is not required to slow down at an intersection, nor to bring his vehicle under control so as to be able to stop, upon the assumption that an unfavored driver will fail in his duty. Belle Isle Cab Co. v. Pruitt, 1946, 187 Md. 179, 49 A. 2d 537; Baltimore Transit Co. v. O'Donovan, 1951, 197 Md. 274, 78 A. 2d 530; Ness v. Males, 1953, 201 Md. 235, 93 A. 2d 541. Indeed the Maryland Court has gone so far as to say: 'The obligation to yield the right of way is so imperative that even excessive speed by the favored driver, on a highway designed to speed traffic, will not ordinarily be controlling.' Ness v. Males, 201 Md. at page 239, 93 A. 2d at page 543." (Emphasis added)

Incidentally, the court also disposed of the plaintiff's testimony that he saw nothing approaching, which, of course, is appropriate here in the light of Oscar Bullock's testimony. The unfavored driver can't circumvent these rules merely by testimony of this kind. Bush v. Mohrlein, 191 Md. 418, 62 A. 2d 301 (1948).

Fowler v. DeFontes, 211 Md. 568, 128 A. 2d 395 (1957), exhaustively reviews the Maryland authorities. They make it plain that the favored driver is under no duty with respect to the unfavored driver to drive within the speed limit, or to slow down at an intersection.

The strictness of this rule is explained in Greenfield v. Hook, 177 Md. 116, 8 A. 2d 888 (1939):

> "If, however, the relative rights of travelers on the two types of highways are held to depend upon nice calculations of speed, time and distance, the rule would encourage recklessness and the privilege of uninterrupted travel, would mean little more than the privilege of having a jury guess in the event of a collision which guess was wrong."

In summary, Appellees contend that the Trial Court correctly directed a verdict for Appellees because Oscar Bullock's story of the accident cannot be believed by reasonable men. Appellees submit that on all the evidence the only conclusion a jury could be permitted to reach is that the collision occurred when the car emerged suddenly from the blind private driveway in front of the bus. Although the evidence was meager, a jury might

have found that the bus was exceeding the speed limit, and as a result could not be stopped as quickly as it might have been. But, the driver immediately applied his brakes heavily when the car came out and swerved sharply to the left when the car continued coming out. This is the disinterested testimony of three bus passengers and the bus operator and is corroborated by the tire and skid mark evidence. On those facts the sole proximate cause was the car driver's negligent usurpation of the bus' right of way. The speed of the bus was in no way a cause of the car operator's violation of the right of way law. "Whatever other consequence the speed might have threatened, it could not be said that it threatened to cause a collision with a . . . /car/ . . . coming through. On the contrary, the situation created by it, if left to itself, with all its natural consequences, would have been a safe one; and it was only by the intervention of the independent agency that the collision resulted, an independent agency not set in motion or at all influenced by the driving of the . . . /Appellee/. That being true, the assumed negligence of the driver of that . . . /bus/ . . . could not be treated as a proximate, legal cause of the accident and the injury." Sun Cab Co. v. Faulkner, 163 Md. 477, 479, 163 A. 194, 195 (1932).

This rule operates to bar suit not only by the driver of the unfavored car but also passengers therein. Brooks v. Childress, 198 Md. 1, 81 A. 2d 47 (1951).

II

Even if Oscar Bullock's testimony is held to be credible, on that version of the accident a directed verdict against all Appellants was proper.

If reasonable minds must be held to be endowed with sufficient gullibility to believe that this collision occurred according to Oscar Bullock's testimony, then a jury could find that this car was stopped on the northbound portion of the highway awaiting an opportunity to join the southbound flow of traffic when it was struck by the speeding bus which was 300 yards away

when the car stopped at that point. However, on that recital Maryland law precludes recovery by the Appellants, and the directed verdict was proper.

Under Maryland law Oscar Bullock's own testimony convicts the car driver of negligence, and that negligence was the sole proximate cause of the collision. Nor would the Maryland courts today apply the doctrine of the last clear chance.

(a) The driver's negligence is established by all the cases cited in Part I by Appellees which explain the Maryland law applicable. When the driver of the car ventured out from the driveway and stopped astraddle the northbound lanes o f the highway, the driver violated the right of way statute, Article 66½, §198A and 207(c), Maryland Code (1951). In Shriner vs. Mulhausen, 210 Md. 104, 122 A. 2d 570 (1956), plaintiff was proceeding east along a favored highway when she approached a private dirt driveway leading to a farm. From that dirt road westward, along plaintiff's approach, the favored highway rises to the crest of a hill, 225 feet away, where the road slopes downgrade for about 900 feet and then rises to a crest of a migh higher hill, over 1300 feet from the driveway. A young man was driving a tractor hauling a manure spreader out of the driveway. When plaintiff drove over the top of the hill she saw the tractor-manure spreader across the highway. She slammed on the brakes, was thrown out of the car, and the car and tractor collided. The Court held that the sole proximate cause of the collision was the tractor driver's violation of the statute in failing to wait until he was certain there was no traffic in the depression. It follows that the driver of the car in this case was negligent in failing to wait until he could safely cross the northbound lanes and proceed directly into the southbound lanes. The Court in Shriner v. Mulhausen, supra, as do many of the Maryland decisions make it plain that the statutory duty to yield the right of way calls for much more than a mere stop at the stop sign, and that the duty persists during the entire passage across the favored road. Fowler v. DeFontes, 211 Md. 568, 128 A. 2d 395 (1957), and cases therein discussed; Capital Transit v. Hedin, 95 U.S. App. D.C. 351, 222 F. 2d 41 (1955).

What was said in the parent of the long line of Maryland cases sounds the theme consistently followed and indeed embellished with formidable variations in the numerous cases in this area. It is quite appropriately said of this case:

> "Whereas in this case the operator of a vehicle enters a highway in disregard of these explicit and mandatory rules and collides with another vehicle approaching thereon, the collision can only be attributed to his negligence." Blinder v. Monaghan, 171 Md. 77, 188 A. 31

(b) Assuming that a finding of excessive speed of the bus would be tolerable, it is not even considered negligence on the bus operator's part to speed with regard to an unfavored driver who usurps the right of way. Davis v. Taylor, _____ Md. _____, 141 A. 2d 706 (May, 1958); State, to the Use of Frizzell v. Gosnell, 186 Md. 218, 46 A. 2d 349 (1946); Brooks v. Childress, 198 Md. 1, 81 A. 2d 47 (1951); Capital Transit v. Hedin, supra.

Hence, no action may be brought by passengers in the unfavored car against the speeding favored driver, even though those passengers were not bound by the negligence of the unfavored doctrine. Brooks v. Childress, 198 Md. 1, 81 A. 2d 47 (1951).

(c) Appellants are not entitled to a reversal on the ground that although on Bullock's testimony it is patent the Maryland law commands a finding of negligence on the part of the driver of the car, the bus operator nevertheless had the last clear chance to avoid the collision.

At best, since Greenfield v. Hook, 177 Md. 116, 8 A. 2d 888 (1939), the numerous Maryland cases have paid only lip service to the doctrine of last clear chance. The inescapable conclusion from the treatment the Greenfield case has received in the nineteen years since it held on the facts in that case the doctrine would apply is that Greenfield v. Hook was a temporary aberration during the infant development of the Maryland law applicable until today without any effort to distinguish the case factually the Maryland Court simply states that in that case the Court found that there were facts which permitted the application of last clear chance. The innuendo

always is that the case will not be followed. Greenfield v. Hook, is the only Maryland case involving application of the last clear chance doctrine to an intersection collision.

In Shedlock v. Marshall, 186 Md. 218, 46 A. 2d 349 (1946), the favored driver saw the unfavored driver from 250 to 300 feet from the intersection when the unfavored driver drove suddenly in front of him. It was held that there was no evidence that the favored driver had the last clear chance to avoid the collision and that he was entitled to a directed verdict.

In State, to the Use of Frizzell v. Gosnell, 197 Md. 381, 79 A. 2d 530 (1951) the motorist on the unfavored highway, after observing the lights of two cars which were allegedly racing on the favored highway over 350 yards away, drove slowly across the favored highway. It was held that the doctrine of last clear chance did not apply.

A most significant case is Baltimore Transit Co. v. O'Donovan, 197 Md. 274, 78 A. 2d 647 (1951), where the unfavored driver testified that he started across the highway in the path of an approaching bus when the bus was 175 feet away going 25 miles an hour. His motor stalled and his car was stopped, disabled, its whole length blocking the bus lane. The court held that the doctrine of last clear chance did not apply. The Court held that " . . . whether it /the bus/ could have been stopped sooner or not, the proximate cause of the plaintiff's injury was the unexpected intrusion into or blocking of the eastbound lane by . . . /the unfavored driver/.

In the light of these holdings and all the cases since Greenfield v. Hook, supra, the Maryland law is clear that the duty to yield the right of way persists for the entire passage across the highway, and that this duty is violated even by an involuntary blocking of the favored highway. And since the favored driver has the right, up until the very moment of impact, to assume that the right of way will be vacated, Fowler v. DeFontes, 211 Md. 568, 128 A. 2d 395 (1957); Baltimore Transit Co. v. O'Donovan, supra, and is under no duty to slow down or have his vehicle under control so as to be able to stop, the doctrine of last clear chance simply has no application

to this type accident. Appelles submit that the Maryland courts would so hold on the version of the accident given by Oscar Bullock.

Miller v. Penn Railroad Company, _____ U.S. App. D. C., _____, 251 F. 2d 379 (December 1957), involved a collision between a truck and a railroad engine and, of course, is not applicable. The duties of a favored motorist approaching an intersection with an unfavored highway are crucial to this case and those considerations do not enter into a crossing collision involving a railroad engine and car.

For these reasons, and the reasons stated in Part I, Appellees respectfully urge this Court to affirm the judgment.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

THOMAS BULLOCK, Administrator of the Estate of Pinkey Bullock, Appellant,	:	
v.	:	No. 14,368
PENNSYLVANIA GREYHOUND LINES, INC. a corporation	:	
HARRY H. BUCHANAN, Appellee	:	
THOMAS BULLOCK, Administrator of the Estate of Daniel M. Bullock, Appellant,	:	
v.	:	No. 14,369
PENNSYLVANIA GREYHOUND LINES, INC. a corporation	:	
HARRY H. BUCHANAN Appellee	:	
CARLESTER BULLOCK, Appellant	:	
v.	:	No. 14,370
PENNSYLVANIA GREYHOUND LINES, INC. a corporation	:	
HARRY H. BUCHANAN Appellee	:	

United States Court of Appeals
For the
District of Columbia Circuit
FILED NOV 25 1958
Joseph W. Stewart
CLERK

PETITION FOR REHEARING

In affirming the decision below this Court takes for granted that the circumstances of this case are similar to those in Capital Transit v. Hedin, and concludes therefore that upon the authority of that case, the appellants should not recover. We think it can be fairly demonstrated that the cases are dissimilar in their material aspect and that the cited case should not control.

In Capital Transit v. Hedin, the unfavored driver drove into the path of an on-coming bus. The driver of the car testified that he was not sure that he looked immediately prior to proceeding on to the highway and that he did not see the bus with which he collided. The Court stated that under those circumstances the driver could not avoid his duty to yield the right-of-way, and that excessive speed of the bus could not excuse him. This is Capital Transit v. Hedin,, 95 U.S. App. D.C. 351, 354.

But in this case, if the evidence of the plaintiff is to be believed - and it should be for this proceeding even under Maryland law Greenfield v. Hook, 177 Md. 116, 8A.2d 888, Brook v. Childress, 81 A. 2d 47, 49, the circumstances are vastly different in their material aspect. Plaintiff's evidence shows his automobile astride the highway even before the bus came into view over six hundred yards away, and the bus approaching the auto at apparently undiminished excessive speed for the distance of at least 1/2 mile. Under these circumstances the bus driver had no excuse - except possibly his own miscalculation - for not avoiding the accident.

Capital Transit v. Hedin, supra, is similar to the instant case only if the defendant's evidence is believed and plaintiff's evidence disregarded.

It is apparent from the Court's opinion that in affirming the lower court it either:

(1) Rejected and ignored plaintiff's evidence as to the manner in which the accident occurred and adopted defendant's evidence; or

(2) Adopted the untenable theory that in a collision between a traveler on a favored highway and one crossing the same, the latter is under all circumstances and because of his mere presence guilty of negligence, and that this negligence is the sole proximate cause of the accident.

It is respectfully suggested that either approach cannot properly be taken in the face of the law of both our jurisdiction and Maryland.

As to the approach to the evidence, in Maryland as here in the District of Columbia, upon appeal from directed verdict for defendant in tort action, the Court of Appeals will resolve all conflicts in the evidence in favor of the appellants and assume the truth of all evidence and all inference which could naturally and legitimately be deduced therefrom which tended to support appellant's claim. Brooks v. Childress, 81 A. 2d 47, 49.

As to the proposition that the unfavored driver's mere presence on the highway is the proximate cause of the accident regardless of circumstances, the Maryland Courts pointedly refuse recognition to any such unsound theory. In Greenfield v. Hook, supra, the court characterizes such a contention as an "untenable theory". In Sonnenburg v. Monumental Motors, 81 A. 2d 617, 620, the court emphasizes that the statute was not designed to change the established law of negligence so as to relieve the favored driver of all duty to use care, no matter what the circumstances. And as late as 1956, the Maryland Court in Shriner v. Mulhausen, 122 A. 2d 570, discussed at length the absence of circumstances that are present in the instant case, as the basis for its decision denying plaintiff relief.

Resort to the Maryland law as dispositive of this case begs the question because in so doing the court ignores the critical circumstance that the facts are, as the Chief Judge characterized them "in sharp dispute".

Here, whether the boulevard law applies depends squarely upon whether plaintiffs yielded or failed to yield the right of way to the bus. This is the threshold. It amounts to the determination of causation. And causation, like negligence, is a jury question where the material facts are controverted. Ness v. Males, 93 A.2d 541, 544 (1953).

In this case the ultimate effect of the lower court's action was to deny to plaintiffs their right to trial by jury.

Finally, this court has held here that "the passengers in the unfavored car appear under Maryland law to be in no better position than their driver, if the latter's negligence is the proximate cause of the accident" (underscoring ours).

This undoubtedly is the law. However, the principle has no application in a case where both drivers are found negligent and the negligence of both is found to contribute to the accident. The Maryland "boulevard" law does not preclude such a finding. Indeed, the Maryland Court in Shedlock v. Marshall, 186 Md. 218, 46 A.2d 349 (1946), which case is relied upon by this Court in its opinion, held that the trial court correctly instructed the jury that if they found that the unfavored driver failed to yield the right of way and that such failure proximately caused the accident, then the plaintiff, an injured passenger in the unfavored car, could not recover from the favored driver. The Court reasoned that the passenger was not bound by his driver's contributory negligence, and that if both drivers were negligent and the negligence of both contributed to the accident, the passenger could recover from both. The jury had to find that the negligence of the unfavored driver only was the proximate cause of the accident before the favored driver "was absolved". 46 A.2d at 358. The point is that the Maryland Court regarded the questions of failure to yield the right of way, concurring negligence and proximate cause to be questions of fact to be submitted to the jury.

This principle is recognized in Belle Isle Cab Company v. Pruitt, 187 Md. 174, 49 A. 2d 537 (1946), also cited by this Court in its opinion. But in that case, where the undisputed evidence showed that the unfavored driver entered the intersection without stopping when the favored auto was approaching only about half a block away, and where there was no evidence of excessive speed by the favored driver, there simply was no evidence relevant to the negligence of the favored driver to go to the jury.

CONCLUSION

It is respectfully urged upon this Court that if it reconsiders this cause in the light of the foregoing authorities it will be compelled to modify its decision.

COBB, HOWARD & HAYES

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Counsel for Appellant

CERTIFICATE

This is to certify that the foregoing petition is presented in good faith and not for the purpose of delay.

_____
William B. Bryant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Petition for Rehearing was mailed, postage prepaid, to McInerney & McCarthy, Esquires, Counsel for Appellees, 1000 Connecticut Avenue, N. W., this 21st day of November, 1958.

_____
William B. Bryant